# OFFICIAL REPORT

OF THE

# DEBATES AND PROCEEDINGS

IN

# The State Convention,

ASSEMBLED

**MAY 4TH, 1853,**

TO

## REVISE AND AMEND THE CONSTITUTION

OF THE

## Commonwealth of Massachusetts.

VOLUME THIRD.

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FRIDAY, July 15th, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday's proceedings was read.

*Orders of the Day.*

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of the Orders of the Day.

*Limitation of Speeches.*

The PRESIDENT stated the first business in order to be the consideration of an order presented yesterday by the gentleman from Bernardston, (Mr. Cushman,) to limit the time allowed to each member to speak upon any question, to half an hour.

Mr. BUTLER observed, that he did not mean to oppose the adoption of the rule; but, he would remark, that we had for sometime had a rule of the Convention, limiting the speeches of members to an hour each, yet that rule had never been enforced in one single instance. Whenever a gentleman had consumed his hour without concluding his remarks, members would cry, "go on," "go on," and he would go on so long as he pleased. Under such circumstances, of course, it would be a personal matter for any gentleman to get up and object. He was in favor of limiting the debate, but he saw no benefit in adopting a rule you could not enforce, and gentlemen had better carry out their hour rule before they undertook to make any new ones upon the subject. Unless there could be an amendment to the order now before the Convention, which should limit gentlemen to half an hour, and then make general consent for them to go on, go for nothing, he thought the rule would be of little avail. He saw, very much, the need of curtailing the debate. He could say all he had to say, and more too, in the course of half an hour. And if any gentleman thought any good could be effected by the adoption of the order, it should have his vote.

Mr. CUSHMAN, of Bernardston, thought there was a great necessity for something of this kind to be adopted. The Convention were now in the eleventh week of their session. They had already consumed much more time than was expected when they commenced, and some measure should be adopted to bring their labors to a close. He appealed to gentlemen to say if, at this period of the session, half an hour was not long enough for any member to speak? The Convention would not listen patiently to them for a longer time. If they desired their speeches to produce an effect upon the Convention itself, they would certainly fail to accomplish the object by continuing them beyond that limit; and if they desired that their speeches should go upon the record for the perusal of posterity, they would be much more likely to be read by making them short.

In regard to the suggestion of the gentleman from Lowell, (Mr. Butler,) he thought it would

be rather inconsistent for him to accept it as an amendment; but he would say, for himself, that if the order was adopted, and hereafter at the close of any half hour speech, there should be a cry of "go on," "go on," he would pledge himself to rise in his place, and object. If the order was adopted, he hoped it would be adhered to rigidly, and he could see no reason why it should not be.

A MEMBER suggested that all the subjects of importance had been before the Convention, and had been discussed to a considerable extent, and there was, therefore, no more need of long speeches.

Mr. EARLE, of Worcester, said, that so far as he was personally concerned, he did not care whether the order was adopted or not, but if it was adopted, he hoped that members would not be allowed to go on by general consent, beyond the time allotted to them under the rule. If one member was allowed, by general consent, to go on beyond his time, no gentleman would think of enforcing the rule against another member who desired also to speak more than his time. He hoped the rule would be rigidly enforced if it was adopted. And he gave notice that if, should it become one of the rules of the Convention, and any member in future was allowed to go on beyond his time, he would move to abrogate the rule itself.

Mr. KNOWLTON, of Worcester, said, he was as anxious as any member in the Convention to bring this session to a close. He had given a practical demonstration of his anxiety in that respect, by sitting quietly in his seat ever since the session first commenced. But there were important questions upon the table of the Convention, which had not been touched. There was one, especially, which he had been waiting a fortnight for an opportunity to call up, but had not yet found a chance—a subject which is regarded by a portion of the community, and an influential portion too, as one of the most important that can be brought before the Convention. While, therefore, he did not wish that any man should occupy the time of the Convention for a moment more than necessity required, he desired that the subject to which he had referred should receive more consideration than it could receive in a half hour discussion. For that reason, he hoped the order would not be adopted.

Mr. STEVENS, of Rehoboth, remarked that he had noticed, since the hour rule was adopted, that when members had spoken to the extent of their limit, there was a general cry of "go on," and they had taken it for granted that such was the desire of the Convention, and without any formal action upon the part of the Convention granting them leave, have gone on. That was all right. He supposed that when any one came to the end of his hour, and no one cried "go on," he would take it for granted that the Convention did not want to hear him, and sit down.

Again, he had noticed that when any attempt had been made here to curtail debate in any shape whatever, for the purpose of progressing more rapidly with the business, nothing had been accomplished by it, and he believed no good would be accomplished by the adoption of this limit. There was yet important business to come before the Convention. The gentleman from Worcester, (Mr. Knowlton,) had referred to an important matter which he had been for some time waiting for an opportunity to call up.

So far as the one hour system was concerned, if any gentleman could not say all he wanted to say in that time, and it should be the general wish for him to continue, he saw no objection. He should vote against the adoption of the order.

Mr. WALKER, of North Brookfield, trusted that the motion would prevail, as the Convention ought to adjourn next week, and the adoption of this rule would facilitate such a result. The hour rule had worked well, and although in a few instances speakers had been allowed to go on beyond their hour, yet we had gained a good deal of time in the long run by its adoption. He hoped, therefore, that the present proposition would be adopted.

Mr. ALLEN moved the following amendment, to come in at the end of the resolution:—"Provided the chairman of each Committee of the Convention shall be allowed one hour upon the subject of his Report."

The question was taken on the amendment, and it was agreed to.

The question was then taken on the order as amended, and it was agreed to.

*Loan of State Credit.*

The PRESIDENT. The first question before the Convention is upon the motion of Mr. Thompson, of Charlestown, to reconsider the vote by which the resolve concerning the loan of the State credit, was ordered to a second reading.

Mr. THOMPSON, of Charlestown. I have but few words to say in reference to the motion I had the honor to submit a few days since. I deem the question to be too important, involving as it does the great interests of the Commonwealth, to be settled by so thin a House as it was the day when the amendment was offered to the original Report, and adopted by the Convention. I am opposed to that amendment, and desire to submit some reasons why I am thus opposed.

Sir, I am opposed to thus restricting the legislature in their action upon a matter of so much interest to the Commonwealth. What has been the experience of the State in relation to the action heretofore taken by the legislature upon this subject of loaning the credit of the State? Has it not been promotive of her best interests? I believe no one will deny that it has, at least no member has as yet denied it. Has it not done more to develop the mineral and other resources of the Commonwealth, to build up villages and increase the taxable property of the State on the lines of the several roads to which the loans have been made, than any other cause? And I would ask, has the Commonwealth suffered any loss, or is it within the range of probability that she can suffer any loss, from the course pursued on this matter? I believe no one will for a moment pretend that she has, or that she can. Two corporations to whom smaller loans have been made by the State, have been prepared to reimburse to the State, and if I am correctly informed, have offered to redeem the whole, or a large portion of that loaned to them, but the Commonwealth declined taking it. How stands the matter with reference to the other great corporation about which so much has been said here, and to which the loan of four millions of dollars was made. The Commonwealth holds stock of that corporation to the whole amount of the loan, besides having a preference over the whole stock held by individuals in that corporation, which is now worth about par, and has been within a short time above par, and could have been sold in the market at a profit of over $50,000. It may be asked, why was not that done? I believe a good and sufficient answer to that is, it was for the interest of the Commonwealth to allow it to remain, for the reason that the State was receiving from that stock seven or eight per cent. interest, and she could not have obtained over five per cent. upon the money derived from the sale thereof; hence, as a business transaction, I say it was a wise and judicious course for the executive to refuse to sell the stock, or take any portion of the money.

We are told these loans were an experiment. Admit they were; but does the success of an experiment furnish any argument why it should not be repeated? I think not.

The amendment which was adopted, I conceive to be one that amounts to an entire prohibition of loaning the credit of the State, under all or any circumstances. What is it, and what does it require? A vote of two-thirds of both branches of the legislature—a greater vote than is required to amend the Constitution. I think, Sir, it would be more to the credit of the Convention, to come up openly and boldly, and assert, in the organic law, that the credit of the State shall never be loaned, than to attempt to prohibit it by such an indirect measure as this amendment would practically carry out. Sir, I am in favor, in all cases, of doing things openly and boldly, and not by any covert means, or the introduction of amendments which may have some plausibility in them, but which, when they come to be applied practically, amount to a prohibition, as much as if explicit words to that effect had been used in the Constitution. I wish that the legislature may stand, in reference to this matter, as they have stood heretofore; and, as I before remarked in relation to the experience of the Commonwealth, it does strike me that it is the dictate of wisdom to profit by the experience of the past. Generally, in business matters, the lessons of experience are the most advantageous and profitable; and I think we need not fear any loss by following the experience of the past in this matter, and allow every case that comes up to be judged of or acted upon in reference to its merits. There may be, and I have no doubt there will be, cases come up when the interests of the Commonwealth may be promoted to as great an extent as they have been in times past; but if we allow this amendment to remain as the action of this Convention, however great may be the necessity, and however much the interests of the Commonwealth might be promoted by carrying out or adopting the same policy which has been heretofore pursued, the gates are entirely closed against the adoption of any such policy. I hope, therefore, that the restrictive amendment will be rejected, upon farther consideration, and that we shall trust the servants of the people to legislate upon this subject as they have in times past, believing, as I do most fully, that the interests of the Commonwealth will be guarded and protected, and that we may expect a promotion of our true interests, instead of any loss which may accrue from such a course.

Mr. GRISWOLD, for Erving. I have been desirous, at some stage of the proceedings, to make a few remarks in relation to this matter, and I will now occupy but a few minutes of the time of the Convention. It seems to me that some false issues have been raised in the course of this discussion. In the first place, the proposition which has been adopted by the Convention, and which it is now proposed to reconsider, will have the effect of putting it out of the power of the legislature hereafter to make a loan in any case; because, if you make a restriction that it shall require a vote of two-thirds of each branch of the legislature, any gentleman can see that it is equivalent to shutting down the gate altogether. I

have taken the trouble to go back and examine the yeas and nays upon the loans which have been made heretofore, and I find that where they were taken in the House, in no one instance—I have only examined those in relation to the Western Railroad—did one of these loans pass by a vote of two-thirds of the members present. If you require a vote of two-thirds of all elected, it is nearly absolutely certain that no loan hereafter can be passed by the legislature, so that the question before this Convention is, whether you will do as you have done in times past, and leave it to the legislature to settle these matters upon their merits, or whether you will put an absolute prohibition into the Constitution. That is the practical effect of the proposition which we now propose to reconsider. I am not a little surprised at the course which this question has taken. Who supposed, when this Convention was called, that the proposition would be seriously entertained here of incorporating a provision in your Constitution which should forever after tie up the hands of the legislature, and put it out of their power to enter upon and maintain such a policy, however great the emergency might be for a different course of policy. This is a new proposition. It was not entertained by gentlemen who first advocated the proposition for calling this Convention. I think that our true policy requires that we should make such changes, and such only, in the Constitution as are clearly warranted and demanded by the public sentiment of the Commonwealth. I think it would be a short-sighted and dangerous policy for this Convention to enter upon experiments and incorporate into the Constitution a provision in regard to which no great feeling was entertained—a provision which, perhaps, in its results, might endanger the whole Constitution. I say then, as a matter of expediency, let us confine ourselves in our action here to those changes which the public clearly demands, and upon which there cannot be that diversity of sentiment which must exist in regard to the question now before us. In the first place, is there any necessity, any exigency for incorporating such a provision into the Constitution? I do not now raise the question as to the expediency or propriety of granting loans by the State at all; but is there anything in the past experience of Massachusetts which requires that any such provision should be incorporated into the Constitution? None whatever. Massachusetts has loaned her credit to seven different railroad corporations. Almost every portion of the Commonwealth has received the benefit of the resources of the Commonwealth in this respect, and every one of these loans has been perfectly safe to the Commonwealth. I have taken the trouble, in order to put this question at rest, to examine this matter myself, and I have a letter also before me from the auditor of the Commonwealth, who of course is perfectly familiar with this whole subject, in which he says that there is no probability that the State will ever lose the first dollar by it. Every one of these lines is perfectly secure; the interest has been promptly paid whenever it was due, and the principal itself is sufficiently secured in future, and two of the roads have paid up the loans. If this be so, what is the reason for incorporating into the Constitution a provision such as this, when the legislature has hitherto been a wise and safe depository of this power. Why, gentlemen say, because other States have run foolishly into debt. This reminds me of a person in health sending for a physician. The physician calls, and he tells his patient that he is not sick, and that he has no need of a physician; but the individual says, My neighbor is sick, and I shall certainly be sick, and I must take some medicine; and thus, against the protestations of the physician, he concludes to take medicine and thus destroys his health, when, if he had let it alone, he would have been quite well. The fact that other States, upon this subject of granting loans, have run into experiments, is no argument for Massachusetts.

Allow me to say a single word in relation to the matter of our farms being mortgaged. I do not know that I should have said anything upon this point, had it not been that an appeal was made to the Democratic portion of this Convention. I know very well that at one time there was a great cry in this Commonwealth that our farms were all mortgaged in consequence of loans to the Western Railroad. I am free to confess that I joined in that cry myself; and it was one of those things which the party with which I was associated used for political capital for several years. I was honest in the sentiments I then entertained, that our farms were mortgaged, and that these loans were not safe; but a most careful examination of the whole matter, together with the experience of eight or ten years, has convinced me—and I am equally honest in saying now what I know to be true—that there is no incumbrance whatever upon our farms in this respect, but on the other hand, there can be no doubt that the real and personal property of Massachusetts has been advanced in value by these loans, many millions.

Why, Sir, I speak from the book in relation to this matter, for I have been now nearly four years in the direction of the Western Railroad, as one of the State Directors. Will gentlemen just look

for one moment at the position of the Commonwealth of Massachusetts in relation to the Western Railroad. That road, in round numbers, cost $10,000,000; $5,000,000 of which is represented by capital stock, $4,000,000 of which is owned by private stockholders, and $1,000,000 by the State. The other $5,000,000 is represented by scrip; $4,000,000 of which is State scrip, or sterling bonds, and $1,000,000 of which is scrip of the city of Albany. Two sinking funds are provided, one for each amount of scrip. These funds are instituted by the premium on the sale of the scrip, one per cent. which the Western Railroad is obliged by law to pay, annually, into each fund, and the annual increase of the funds by interest.

Since the opening of the road from end to end, that is, since about 1844, the Western Railroad has paid the interest on this five millions of scrip, has paid one per cent. annually into each of the sinking funds; has built a second track from Worcester to Springfield; has greatly improved its baggage and passenger cars; has built new, large and commodious depot buildings and freight houses along its whole line; has paid an annual loss of from five to $8,000 on the guaranty on the Pittsfield and North Adams Railroad; has paid its president a salary of $5,000 annually, and other officers and agents in proportion, has suffered a defalcation which shocked the whole financial community, resulting in a loss of from $50,000 to $75,000; has a contingent fund of over $100,000, and during this period has paid upon the five millions of stock a semi-annual dividend of four per cent.

Now, what is the state of this matter? The sinking fund of the Western Railroad loan is now nearly $800,000; the sinking fund of the Albany loan is more than $350,000. The sterling bonds, the scrip issued by the State, is payable in thirty years from the time it was issued, and of course about 1870, and the Albany scrip is payable, I believe, about the same time. If you will go down to the auditor's room and see him, (he having made the calculations,) he will tell you that if the Western Railroad continues as it has for the last few years, it is absolutely certain that in 1870 it will be nearly or quite able to meet the $4,000,000 scrip, the sterling bonds, and the $1,000,000 Albany scrip. Then what have you? You will have ——

Mr. HOPKINSON, of Boston. I wish to ask the gentleman for Erving, a question. I wish to know if the Western Railroad Company has paid four per cent. annually from the time the stock was paid in.

Mr. GRISWOLD. I said from about the time the road was completed, which was in 1844 or 1845.

Mr. HOPKINSON. I think it is not more than about three and a half per cent. since the stock was paid.

Mr. GRISWOLD. I presume that may be so.

Mr. HOPKINSON. Does the gentleman say that the double track was built out of the income of the road?

Mr. GRISWOLD. I suppose it was not. I am only stating general facts in relation to the road. What I say is this,—and you will not rely on my authority, if you will look through the Auditor's Reports of the last few years, you will see the same facts stated there,—that you will find that in 1870, these five millions of scrip will be nearly or quite paid off. Then how will the Western Railroad stand? Why, the entire income of that road will be applied upon the five millions of stock, one million of which the State owns.

Now the interest which the Western Railroad pays annually on the $5,000,000 of scrip, and the one per cent. which it pay sinto the sinking funds, will then be divided upon the five millions of stock, in addition to the eight per cent. which we now divide annually, making fifteen cents on the dollar, which they will divide after about 1870, upon the five millions of stock. So that, instead of the State's ever losing a dollar from the Western Railroad, if we can believe in the future, she will double the value of her million dollars of stock which she now owns. Every dollar will be worth double its par value. The auditor has reached the same conclusions in his reports for the last few years.

Now what incumbrance is that upon the farms in Massachusetts? It is the same incumbrance which the issue of scrip in the city of Boston, for obtaining Cochituate water is, or, rather it is not half as bad, for I understand that the income from the water does not pay the interest on the scrip issued for obtaining this water. But the introduction of this water, at the expense of more than five million dollars of scrip of the city of Boston, has advanced the value of the real estate in this city, and why? Because the benefits, present and prospective, arising from the Cochituate water, are greater than the interest on the five millions or more of scrip which they have issued to bring that water into the city of Boston. It is just so in the matter of the State scrip, only it is a much better case. I am willing to stand upon the facts in the case, and I dislike to have gentlemen take us back to the old issue upon the subject of having our farms mortgaged. I know very well that the party with which I was connected, thought, at that time, the loans would be unsafe, and I dare say, if I had been a member of the legislature at that time, I should

have voted against them myself. But all experience has shown us that the loans are safe, and that the State, so far from losing anything, will make a half a million or a million of dollars, if she holds her stock till 1870.

But the great point in this question, is this. Will you leave this matter to the legislature, or will you submit it to the people, or require a two-thirds vote? The question of submitting it to the people, I think, is now out of the case; that has been decided shall not be done. It seems to me that as this policy has worked well heretofore, as the State has incurred no risk, as the State is in no possible danger from any loan hitherto made, it is the part of wisdom and good policy to leave it where we find it. It will be soon enough to put in a constitutional provision upon the subject, whenever the State is in danger in this respect.

I will say that, as something has been said in relation to the Hoosac Tunnel, that is not the issue before this Convention. It is not properly raised in this connection. The question is, whether we will trust the legislature, who are the proper judges, and before whom the facts in one case and another can be presented, so that they will be able to understand them. The question is, not as to this measure or that measure; and I am not to be drawn into a controversy on such an issue, for I am unwilling to tie up my hands in that manner. Other counties, the county of Bristol, the county of Plymouth, the county of Barnstable, the county of Essex, and even the county of Suffolk, may need this aid. The time may come when it will be an object of immense importance that a loan should be nade by the State, for an object in one or the other of these counties, which every-body will agree is important and safe. Now will you put a provision into this Constitution which will tie forever the hands of the legislature, when you might as well leave it as it has been left in the past, to the discretion of the legislature, which has acted wisely and safely heretofore?

I wish to say a single word farther. I dislike to allude to matters that concern party, and I rarely or never do it in debate. But an appeal has been made, evidently with a design to influence some gentlemen with whom I am politically connected, or the party with which I am associated. Now, allow me to say, it has always been a Democratic doctrine in this country, so far as I understand it, to favor internal improvements; and every Democratic president, from Jefferson down to president Pierce, has done it. Jefferson, Madison, Monroe, Jackson, and Polk, each in urn, suggested to the people of this country, the propriety of changing their Constitution, so that a system of internal improvements could be carried on by the general government, so powerfully were these great men impressed with the necessity of internal improvements, and with the belief that the Constitution did not permit them to be made by the general government, except to a limited extent. And several of them strongly recommended that, so long as it could not be done by the general government with the United States Constitution unamended, it should be done by the States themselves, which would better understand the wants of each locality. I do not wish to advise to enter upon any rash experiments. I would not grant a loan in every case, but I would leave that power with the legislature; so that whenever there is a necessity, and wherever there is a great public exigency, and the loan can be safely made, I would make it, at least. I would leave it to the legislature, which is the proper body to settle that question. Shall we sit here to forge chains and shackles and sepulchres, I may say, for the industry of Massachusetts? For one, I will not do it.

I have not time, but I should like if I had a few moments, and if I had the ability, to set forth the advantages which have accrued to Massachusetts, to Boston, and to every part of the State, from the great railroad enterprises which were aided, to a very great extent, by the credit of the Commonwealth, many of which would, probably, not have been built without that aid. And this aid has been granted, too, without the Commonwealth being in danger of losing the first mill, and by simply endorsing this paper. I would like, if I had time, to set forth in my poor way, some advantages which have accrued to the people of this Commonwealth from these loans, or from the railroads to which they were loaned. Sir, standing here, we seem to underrate the great advantages to the farmers, the mechanics, to the manufacturers, to the mercantile interests, and to all the industrial pursuits in Massachusetts, accruing directly and immediately from the construction of these railroads. Look over the valuation of 1850; look at Pittsfield, and Springfield, and Worcester, and Boston, and Lowell, and Fitchburg, and all the main points where these great railroads pass, and look at the millions and millions of increase of property. It is a direct and immediate result, to a very great extent, of the construction of these roads. Sir, when the policy of Massachusetts has resulted in such beneficence and advantage to the State, I am surprised that there is any man of any party who will come up here and seriously propose to shut down the gate entirely, and put it out of the power of the legislature, even in the

greatest exigency and the safest loan, to grant the credit of the State.

Sir, for one, I take my stand on the side of internal improvements; not that I would embark the credit of the State to an unreasonable or unsafe extent; but, for one, living in this age, I take my stand in favor of internal improvements, and I undertake to say that no man can stand up and defend himself in Massachusetts, in New England, in New York, or in this country, who is opposed to internal improvements.

I hope, Mr. President, that this matter will be left, as it has been before, with the legislature. There is no danger of any unsafe loan being made. The great corporations which are interested to defeat any loans, using their influence in connection with men who are themselves opposed to these loans, will be power enough for any company who wish for a loan, to meet; and there will be no danger whatever, that an imprudent or unsafe loan will be made hereafter.

Mr. WILKINS, of Boston. Mr. President. It has been no purpose of mine, to occupy a moment of the time of this Convention in discussing this subject. I have listened to the discussion, thus far, without wishing to be heard, because I thought I saw that the sense of this body was correct, and needed no aid from me, in coming to a correct conclusion. But the position of this matter has undergone a change—the right appears to me in jeopardy—and I must claim the indulgence of the Convention, while I briefly express my views upon it.

It is altogether too late to attempt to disguise the fact, that the topic under discussion is indissolubly connected with the Hoosac Tunnel. The first speech made on the subject, by the gentleman from Abington, (Mr. Keyes,) has dovetailed them together; and nearly every subsequent speech and vote has only demonstrated the connection. Hence, it has seemed to me, that we have been engaged, while discussing this matter, in legislation, and that of the worst kind: special legislation. And, it would have been hardly an inappropriate mode of proceeding, to have issued an order of notice to the Troy and Greenfield Railroad, so that they might appear with their counsel and witnesses, and have a full hearing upon the merits of their case, before the Committee of the Whole.

It is true that some few have addressed this body, either in Convention or in Committee, upon the merits of the question, without any *apparent* bias. My colleague, who early addressed the Committee, (Mr. Hillard,) in favor of the Report of the Committee, and the gentleman representing Manchester, (Mr. Dana,) and my colleague, (Mr. Gray,) who immediately followed him, both in favor of the Report, seem to me to have fully and satisfactorily met every argument that has been or can be brought on the other side—and they have kept aloof from present exigencies, and from preconceived opinions.

But how is it with some others who have taken part in this debate? Are they in a position to bring to this topic unbiased opinions, and candid judgment—and are their arguments entitled to the right in this matter, which we should all deem them entitled to on indifferent subjects?

The gentleman from Taunton, (Mr. Morton,) has taken a conspicuous part, and made untiring efforts to defeat the acceptance of the Report, and what is his position? Why, Sir, he has himself told us, that his views on State credit were put upon record many years ago; and some of us well remember them. He has himself alluded to the *probable* fact, that in consequence of these recorded opinions, he found that he was obliged to quit a temporary office, for the attainment of which he had given up a permanent one. If that gentleman has any regrets for the change he then made, I will assure him that I believe he has the hearty sympathy of his political opponents. We, then, and still think, he left an office, the duties of which he was eminently well qualified to discharge, and was discharging, with great usefulness and acceptance, and entered upon another office, about his qualifications to fill which, there were at least two opinions at the time, though there appears to have been an approximation to one sentiment on the subject before the year expired.

Now, Sir, it appears that this sentiment concerning the credit of the State, formed and enunciated in the dark prospects which then overhung the Western Railroad enterprise, is still, with him, a cherished sentiment. It has cost him too much not to be highly prized, and he now is desirous that the Convention and the people should adopt what the people then repudiated. The gentleman undoubtedly formed, and still cherishes this opinion, in all honesty and sincerity; but I submit, whether there be not with him some pride of opinion, some stickling for consistency, which may obscure his better judgment, under the particular circumstances of the present case; and whether he has not attached a value to this opinion, derived rather from what it has cost him, than what it is worth to us.

And how is it with other gentlemen, who are throwing obstacles in the way of accepting the Report? One of my colleagues, (Mr. Hopkinson,) who has twice spoken on the matter in opposition, (though I was not present to hear him,)

daily eats the bread that flows from the bounty of the State. Though not connected with the Western Railroad, that I know of, yet he is most intimately connected with another corporation whose life's blood is derived from the Western, and the Norwich and Worcester Railroads—both of which owe their existence to the credit of this State. Now, Sir, situated as that gentleman is, surrounded by such accidents as he is, he must feel no surprise if much less weight be attached by others to his arguments and suggestions, than he thinks them entitled to, and which, under other circumstances, they would undoubtedly be entitled to.

But my catalogue is not yet finished. One other colleague, (Mr. Giles,) has proposed an amendment which threatens the acceptance of the Report; and still another colleague has announced his intention to offer another in opposition, if an opportunity occurs. And, what is the position of these gentlemen in relation to this matter? I find them, Sir, both to have been opponents to the Hoosac Tunnel bill, in the House of Representatives in April last. Among the *nays* upon the passage of that bill, I find both their names recorded, with those of seven others only of the Boston delegation. Now, Sir, these gentlemen are committed, both of them, upon this matter. They have preëxistent opinions to sustain, a consistency to maintain; and they appear to be throwing the weight of their talents into a scale here to defeat a measure which they were unable to defeat in the House of Representatives. If, Sir, these gentlemen had voted for that bill, and now should propose to take from the legislature the power to make such grant, then we should have proof that these gentlemen were actuated by principle and an unbiased judgment; and that in this course they were seeking the public good, though it would conflict with a great enterprise, to which they had showed themselves to be entirely friendly. But, we have no such exhibition before us; but on the contrary, we witness endeavors on their part to induce measures that will embarrass and defeat a great public enterprise, and this under circumstances calculated to raise a doubt of the unbiased character of their judgments and opinions upon those measures.

Here, Sir, I close what I have to say upon the debate thus far. I will now address myself to the matter in hand, and advert to some matters not yet, I believe, touched upon.

In settling the basis of representation, this Convention has departed from what it regarded right, and has bowed to the paramount force—exigency. Were we beginning the formation of a government, we should have formed one differently. We found we were too late in the day to follow out theory, but were obliged to be controlled by practice. Now, Sir, it seems to me that we are in precisely the same predicament in relation to State credit. It is too late to set up a theory, but we must be controlled by practice. The current of State bounty and of State credit is already in motion; its refreshing influence has already been felt, and its sustaining power has imparted its blessings. Credit, both public and private, is the great instrument by which the miracles of civilization are being wrought in this nineteenth century. We have all read the beautiful simile of Junius, which is no more beautiful than true. "Individual credit," says he, "is wealth; public honor, is security; the feather that adorns the royal bird, supports his flight—strip him of his plumage and you fix him to the earth."

Credit, Sir, both public and private, is the great element, the chief ingredient, of all true progress in civilization and refinement. By it, the experience of the past and the hopes of the future are made to blend and work in the present. Without it, we should retrograde, and with rapid strides should return to barbarism. It enters deeply into our social system and civil relations. It is like the air we breathe, everywhere circumambient, but ever unfelt. Deprive us of it, even in a slight degree, and we pine and die. It is a system of mutual obligation and mutual forbearance. It grows and flourishes upon mutual wants and mutual benefits; and it unites and knits together the mass of a community, so that it acts and works to one end like one man.

Now, Sir, I say it is too late to rise up and stay this current of public credit in this State. It has been beneficially exercised. Its blessing are felt every day; and these blessings are of two kinds, one public and the other private. The credit of the State has been applied to improvements in the northern, the eastern, the southern, and the western parts of the State; but not in the northwestern. The ground on which this credit was loaned, was that the whole State, the public, was to be benefited thereby. This was true ground; but individual benefit and private good were also blended therein. For example, the Western Railroad was aided because it was deemed to be a benefit to the whole State. But, besides this public benefit, every farmer and mechanic on the line of the road, received a personal and private benefit which was not partaken of in any considerable degree by others of the line.

Now, to accomplish these public and private benefits, the credit of the State has been loaned, and, as the gentleman representing Wilbraham,

truly remarked, every man's farm and stock has been mortgaged for its redemption. To construct the Western Railroad, the farms in Shelburne have been just as heavily mortgaged as the farms in Chester; but, besides the public benefit derived therefrom, which accrues to the inhabitants of both Shelburne and Chester equally, there has accrued to the inhabitants of Chester an enormous private benefit which is not shared at all by the inhabitants of Shelburne. This benefit lies in the increased value of land, of water power, and other articles, growing out of the increased facility of reaching a market.

Out of this very unequal private benefit growing out of the public loan, arises a demand, I will say a claim, for reciprocal accommodation; a claim resting upon justice, though of course not to be enforced by law. A claim, the justice of which every upright mind sees, and every honest heart acknowledges. Then, I repeat, that if in the four quarters of the State, great and important private advantages have been derived from the loan of the State credit over and above the advantages derived equally to all the citizens of the State; and if these private advantages have been attained by a lien upon the private property of those living out of the range of these advantages —then I say these citizens who have obtained no private advantages from such public loan or credit, have a claim, and I think a strong and irresistible one, for reciprocal accommodation and favor.

As this point has not been before alluded to, I will dwell a moment upon it.

The people of this State, dwelling along the lines of various railroads, and especially upon the line of the Western, have derived great benefit individually from the loan of the State credit, in which benefit the people living in the north-western part of the State had no interest. But the people living in the north-western part of the State, were as much bound, and their property as much pledged to pay said loan, as were those living in the benefited districts. Now, it seems to me, that out of this fact which exits, and has existed for years, the people of the north-western part of this State have a claim, a forcible and a valid claim, upon the people of the other parts of the State for reciprocal favor —a claim which will not be lost sight of, and not be the less urgent, because there is no tribunal to enforce it. And while such a claim exists, and is unrealized, it is, as it appears to me, a gross piece of injustice to increase the difficulty, and throw impediments and obstacles in the way of obtaining that reciprocal benefit to which they are entitled. I cannot reconcile it to my sense of justice and propriety, thus to shut down the gate at this time, and stop the flow, I will not say of favor, but of equity.

But, it will be said that the proposition now before us does not shut down the gate, it only increases the ordinary and common difficulty of accomplishing the object. This is true in the end, but not, I think, in fact. I think it shuts down the gate.

Sir, the gentleman for Manchester, (Mr. Dana,) in his forcible argument, stated that the questions which would arise in relation to the State credit, would be *sectional* questions. This is true, and need not to be put in a prospective form. It is now, here on this floor, and has been and will be in our legislative hall, a sectional question. We hear it here in the speeches on what should be an abstract question. We see it in the votes. The interests promoted by and connected with the Western Railroad, are here, and have been elsewhere, an adverse party to this claim in equity. There is no pretence that that corporation is not deeply interested in this question, and did not influence many votes upon it. Now this is sectional. That road runs, with its adjunct having identical interests, through the whole length of the State. Its interests are identified with the interests of the people dwelling upon its line, between Boston and the New York line. There is a tremendous local and sectional interest already blossomed, and fast running to seed, standing before the public, and in divers ways operating upon public sentiment adversely to the exercise of the proposed power by the legislature.

Now, Sir, we have agreed to a basis of representation which, in future, will give a House of four hundred and seven members; a majority will be two hundred and four, and two-thirds two hundred and eighty-one. It will require, then, seventy-seven more votes in a full House to carry such a measure, if the proposition before us be carried, than it will to pass ordinary bills. Is there here a single individual who believes that a bill of the character of the Hoosac Tunnel bill could ever be carried by such a vote, in the face of such an enormous local and sectional opposition as has already manifested itself, and is lively and active at this moment? And this, too, entirely irrespective of the merits of the case. For the greater the merits of the case, the stronger and more vigorous the opposition. If the Tunnel cannot be made, then the interests on the line of the other road have no special reason for opposition; but the more feasible such an enterprise is proved to be, the more those interests are endangered, or deemed to be endangered.

I cannot, therefore, think that any person can vote for the proposal before us, who is not willing

to pass judgment upon the Tunnel enterprise, and shut down the gates of right and equity upon the people of that section of the State.

Now, Sir, allow me to say a word in relation to the effect which such an article in the Constitution will probably have upon its adoption. I do not profess to know very well what the people will do and what they will not do, in given circumstances. They have done some things which I thought they could not do, and they have sometimes failed to do what I thought they could do. But, Sir, we all know that sectional feeling is not all on one side. When it is indulged in in one region, a counter feeling will certainly be engendered in the other. If the proposed provision be inserted in the Constitution, how will the northern half of this State, from Boston to the New York line, vote upon it? Sir, it seems to me that we need no prophet to tell us; it seems to me that the people in that region, must be hungering and thirsting for a new Constitution, if they are willing to adopt one containing a clause so hostile to their interest, and inserted with almost the avowed purpose of rendering the execution of a favorite enterprise forever impossible.

Mr. President, allusion has been made here to the practice of other States. It seems that a considerable number of the other States of the Union, have adopted a clause in their Constitutions, prohibiting their legislatures from granting the credit of the State to the aid of individual or corporate enterprises. Sir, I imagine that there is some misapprehension upon that subject. Most of the States which have adopted this provision—at all events very many of them—are States which have been unfortunate in their undertakings, and have suffered considerable loss in consequence, and incurring large debts. But, Sir, I apprehend that in most of the cases in which losses have been sustained, they have been those in which the State itself has undertaken to carry out the enterprise, and not in instances in which their credit has been loaned to companies for that purpose. Michigan, Illinois, Indiana, and Pennsylvania, to some extent—though not to the full extent—and all the other States which have suffered, are those States which have undertaken to do their own work, and reap the profits. I do not remember—to be sure I am not very well posted up in these matters, and there may be instances which have not come to my knowledge—but I do not believe that a single instance can be found of any of those States having loaned their credit to the amount of a single pistareen to any private company; and what losses they may have incurred, have doubtless been in consequence of having undertaken these works themselves; and there can be no doubt, that they have met with great losses. The State of New York has adopted both of these modes. She has both loaned her credit, and carried on internal improvements on her own account. She has aided companies; and one which I have now particularly in my mind, is the New York and Erie Railroad. When that road was first projected, the company raised a certain sum—I do not remember how much—but having a very hard grade to overcome in passing from the Hudson River to Orange County, they spent all their money, and the State loaned them several millions. Still, not having enough to complete it, the State took the road and sold it at auction, but did not realize anything worth while, and the State itself sustained considerable loss. But now that road is completed; and when four or five millions of dollars had been expended upon it, and the principal difficulties overcome, another company came in and took up the road and completed it. Now, Sir, it is quite probable, that the whole of that region would yet have been without that railroad accommodation, had it not been for the expenditure of the State; and if you now go into that State, I doubt whether you can find five reasonably intelligent men in the whole of it, who do not rejoice at this day that the State made this advance.

[Here the hammer fell.]

Mr. LADD, of Cambridge. I am glad to find at length that the policy in regard to granting the aid of the State credit in furthering and carrying on the great objects of improvement in our Commonwealth, has at last received its proper consideration; and while I concur entirely in what appear to me to be the very conclusive views of the gentleman for Erving, (Mr. Griswold,) on this subject, as a reason why we should not now, and at this stage of our progess, forever close all chance in the future of aid from the Commonwealth in regard to projects of this character, I will take the liberty of presenting very briefly my views upon this question; and while they may be very general in their character, I will premise that if they have no other quality to recommend them, they shall at least have that of brevity.

I am one of those who, from principle, have always adhered to that policy of legislation which is not confined to the minimum amount of legislation—not to those simple and naturally general laws—but I have always regarded it as one of the highest functions of the Commonwealth, and of its legislature, to extend a beneficent and parental aid to those projects which tend to develop all the resources of the State, and for the improvement of the possessions of all its citizens; and is there any gentleman on this floor, or any man in

this Commonwealth, that will deny that that policy which has been pursued for twenty or twenty-five years in encouraging these enterprises, has been a good policy? Is there any man who will deny that it has been a sound policy? Will any man deny that it has brought untold riches to the Commonwealth, and that it has contributed, directly or indirectly, to the wealth and prosperity of our citizens? No gentleman, I think, will deny it. Then the question comes, whether at this time the policy should be changed; whether we should introduce into our organic law in absolute prohibition that no legislature hereafter shall grant any such aid? And yet I understand that to be the effect of the amendment as it now stands, if it should be adopted. This matter, then, it seems to me, depends upon higher considerations. If we come to that conclusion, we must foresee that the time has arrived when no farther aid should be granted, and all supplies of this nature in future should be forever stopped. Now, this is sufficiently answered, by the fact that we have brought into this discussion a great enterprise, in which a large portion of the Commonwealth is directly or indirectly interested. It can only be brought in here for the purposes of illustration; and does not every gentleman know that if this provision passes, requiring a vote of two-thirds of both houses of the legislature before any such grant is made, it will defeat the object to which I refer, and perhaps every object, however meritorious?

I concur with the gentleman for Erving, that it might, and in all probability will, have that effect in the organization of the legislature of the Commonwealth on questions of that kind; that there will be differences of opinion—honest differences of opinion—in the first place, as to its necessity, and in the second place, as to its security, and in the third place, as to the propriety of granting aid in any particular instance; and the result will be in every case, however meritorious, if you require two-thirds of each House of the legislature to concur in the grant, that they never will concur. I think, therefore, that gentlemen ought not to come hastily to the conclusion that it may never hereafter be desirable that such aid should be granted. And if that be so, are gentlemen prepared to incorporate a provision into the Constitution, the effect of which will be to declare that it never hereafter shall be granted? Such will be the effect of the provision as it now stands. Why require that two-thirds of the legislature shall be required to concur? Sir, it seems to me that such a provision originates in this consideration: that you are not willing to trust the legislature. A distrust of future legislatures, appears to me to be the sole foundation of the argument on which the proposition is based. And why should that be so? Why are you unwilling to repose in successive legislatures a reasonable confidence that they will not abuse the trust confided to them? With all the checks and securities that you have, is there any danger that they will overstretch their power? Is there any danger that any proposition will be passed, unless it be such a one as ought to be adopted? Sir, with the light of past experience, with the facts which we have all around us, illustrating the policy of the Commonwealth on this subject, it seems to me that we cannot shut our eyes to the importance of leaving this matter entirely free to the legislature. We do not, and we cannot know what important questions may arise. I am, therefore, in favor of a reconsideration of this subject, with a view to strike out that provision requiring the concurrence of two-thirds of each House. I would have the matter left entirely to the wisdom and discretion of successive legislatures to determine. We must repose confidence somewhere; and I do not know where we can repose it better, or more securely, than in the legislature chosen by the people to watch over their interests.

Mr. HATHAWAY, of Freetown. When this subject was under consideration the other day, I had, I believe, about four or five minutes time in which to express what I desired to say. I then stated to the Convention, that at some future time, if I found an opportunity, I should endeavor to present my views in relation to this matter of loaning the State credit. As my friend from Fall River, (Mr. Hooper,) remarked, a day or two ago, I never made a set speech in my life, and therefore my remarks may be of rather a desultory character; but I have my views in respect to this question, and they are views which I have entertained for a long period of time.

Permit me to say, before advancing farther, that the gentleman for Erving remarked that this was not a part of the programme under which the Convention was called together. I do not know that it was; but I know very well—as well as that gentleman knows—that this matter has been before the people, and has been discussed for years, and years, and years, that have passed by; and, as my friend from Taunton, (Mr. Morton,) said the other day, such is the truth. I have had something to do with this matter for years, and years, and years; and I am not yet convinced but that the argument—I am not about to say in reference to the particular matter which has been referred to, whether all the farms were mortgaged or not, or whether our farmers would suffer from

the establishment of railroads or not—but the principle involved in this provision I then maintained, and yet maintain to this day, as being true. In reference to this matter of loaning the credit of the State, or the funds of the State, I have to say, that the funds of the State belong to the State; the *credit* of the State belongs to the people, and to the individuals who make up that people. But, permit me to say, Sir, that the individuals who make up the people, have an interest not only in the credit of the State, but they have an interest, also, in the money that is in the treasury of the State. I was remarking the other day, when I was up before, when the proposition of the gentleman from Taunton was under discussion, that that proposition did not go far enough for me, but yet that I should vote for it, because I thought it probably was the best we could get. After it was negatived in the Convention, I made up my mind to take the next best that I could find, and that came as near shutting down the gates as might be; and hence I voted for the proposition of the gentleman from Boston, that is now the subject of reconsideration. If any corporation, Sir, in this Commonwealth—I lay it down as a rule, and more especially railroad corporations, when fairly looked at and considered—will probably yield six per cent., and the community are satisfied that it will yield six per cent., there will always be a sufficient amount of private capital in the Commonwealth to take the stock. It probably never will be otherwise in all time. Hence, if the Hoosac Mountain is to be bored, if there is a tunnel to be made through it, if a railroad in that direction will be a six per cent. paying stock, there is no danger but that sharp-eyed individuals and keen-sighted speculators—the men of money and of means—will be ready to take that stock; aye, plenty of them; and there will be no necessity for ever asking the loan of the State credit.

Sir, the Western Railroad was a matter of experiment; so, too, was the great canal which was opened from Buffalo to Albany. Both of these were mere experiments. Every one saw the necessity of having a great highway from Albany to Buffalo, in order that the waters of the Hudson and the waters of the lakes might be connected. Every one saw the necessity of having a highway between Boston and Albany, as the products of the West might as well and as cheaply find their way to the eastern section of the country, as to go down the waters of the Hudson to the city of New York. But, because we have experimented once or twice, and may have come out well, is that any reason why we should be continually experimenting so long as any person wishes so to experiment? By no means. Shall we bring our experiments into competition with each other? I think that that is altogether unnecessary.

If the Western Railroad does all that is necessary to be done, and all that was expected to be done, under that experiment, then why experiment farther? Sir, I am not disposed here to go into statistics, although I have seen some statistics upon this subject. I am not disposed to show here, if I could, that the reduction upon the carriage of freight is going to be but very small, provided you build your railroad from here to Troy. I rather think that a matter not to be discussed here.

But, in reference to this matter of experiment, what are the facts? The great State of New York took the lead, as to these great avenues of travel which have been opened. She opened her canal from Albany to Buffalo. Pennsylvania followed, and she not only opened her canal, but a railroad, in order to connect the two extremes of the canal on either side of the mountains from Johnstown on the one side, to Hollidaysburg on the other. It was an undertaking which required a great amount of capital, but being an experiment, not an individual who was a capitalist, dared to hazard his money upon it. It became necessary, then, in order to ascertain whether this experiment would be profitable or not, that the State should loan its credit to the enterprise. It did not exactly loan its credit either, for that great internal improvement belonged to the State, and not to an individual corporation. The State took the stock, and the State built it. There was no asking the State to loan its credit for the encouragement of any association of individuals. The work was State property.

Well, what followed in process of time? The next thing we see, so far as the State of New York is concerned, is a railroad laid along, almost upon the banks of the canal, from Albany to Buffalo. The different links in the chain were built and owned by different corporations, but they are virtually one. Was there any loaning of the State credit to this corporation. No, there was not. But instead of this, individuals of capital vested their money in different portions of that chain, as they advanced from one stage to another. And what did the State of New York do? She imposed upon that road burdens, and because the State itself owned the canal, she would not permit the railroad from Albany to Buffalo to carry a single pound of freight over their road, between those two points, without paying precisely the same duty to the State, which the owners of property transported upon the canal, paid to the State.

That was very well for the time being. In process of time, the project of the New York and Erie road was started. I supposed the gentleman from Boston was going through the history of that enterprise; but he did not tell us the end of the matter. That road went on for a time, and they asked the loan of the State credit to assist them. Mark, the first experiment in reference to the canal was paid out of the public purse, and the first road built from Albany to Buffalo, was an experiment paid for out of individual funds. Then comes the New York and Erie road, the object of which was to open another great highway between the waters of the lakes and the waters of the Hudson River and the ocean, for the exportation and the importation of goods, from this section to that section, and the produce of these different sections to New York. They call upon the great State of New York to loan its credit. The loan was made, to the amount, according to my recollection, of three millions of dollars. Well, they undertook to build their road—that is, the corporation, and not the State—with the loan of about three millions of dollars of the State credit to assist them. They constructed the road as far as the village of Elmira, and there they stopped, for want of funds. The stock was not worth a dollar in the market. But they formed a connection with another road which came down from the head of Seneca Lake to Elmira. By this means they were able to diverge to that lake, take a steamboat, and land at Geneva. Now, pray tell me, if they stopped there in the construction of their road, how much better off the State of New York would have been for this loan of three millions of dollars? What was the consequence? The State of New York, to induce that company to carry through their road in a given reasonable time, said: "Gentlemen, I know you will never proceed another inch, and the people of the State will lose the money they have loaned you. We know your work is to come into competition for the same business done upon our canal and by the other road. We cannot raise a single dollar from the road to pay us our three millions, and if you will go on and complete your road in a given time, we will give you the three millions of dollars."

That was the condition in which that great Erie road stood. They went through with the work, and yet, with this gift of $3,000,000, how much is the stock worth? Is it worth the one hundred dollars the share, the par value? By no means, and never will be; and I do not believe that any man in his senses believes it ever will be worth that. After that contribution of three millions, I believe the stock is worth about eighty or ninety dollars on the share. But that is not the end of the matter. The road between Albany and Buffalo comes to the legislature, and says: "You have imposed a restriction upon us in regard to the transportation of freight, and now you have put a road in competition with us. Now, we do not ask of you a gift of $3,000,000, but we ask permission to carry freight free of tolls at that season of the year when your canal is frozen up. You have imposed upon us a duty, when you could not carry a pound of freight upon your canals. We ask you to remove that restriction, and put us upon the same footing with the other road."

And what did the State of New York do? They took off the duty, and that road is now permitted to carry freight in precisely the same manner as the southern road does, and although duty is to be paid upon goods transported upon the canals, no duty is paid upon that which is carried upon the railroads.

This is the history of the internal improvements of the State of New York. Now, who has suffered from that policy? Who but the individuals that live in the State of New York?

Sir, I should not have said a word in reference to the history of these great matters in the State of New York, had not the subject of the Hoosac Tunnel been introduced here. I am opposed to the proposition of loaning the State credit, from principle. If I had been here at the time when the credit of the State was loaned to the Western Railroad, I should have been opposed to it, because it was a matter of experiment; and I hold that the agents of the people ought never to experiment with the people's money. But the loan was granted, and I pray it will turn out well for the State.

I believe the State of New York also loaned its credit to another railroad, called the Hudson and Berkshire Railroad. What is the condition of that road to-day? I understand it is advertised for sale for the non-payment of the interest to the State. It never will be a road paying six per cent.

Well, Sir, what is applicable to a great community is applicable to a small community, and what is applicable to a small community is applicable to a great State. Now, let us see how this matter has worked, when applied to a smaller body than the State. The city of Bridgewater, in Connecticut, under the authority of the legislature, loaned their credit to a railroad called the Housatonic. They did this under the mania and fever that was then raging in relation to railroads. Repudiation was the consequence. When the scrip which was issued by them became redeem-

able, there was a perfect tumult in reference to the matter; and yet I venture to say that every person in Bridgewater, at the time the scrip was issued, was in favor of it. Yet repudiation took place, and execution after execution issued to enforce the payment. They went to the supreme court of Connecticut, and it was not until the law had been confirmed, over and over again, that they would pay.

In consequence of the great amount of internal improvements in which Pennsylvania became interested, she almost came to the door of repudiation. Time after time she could not pay the interest upon the money she had borrowed in Europe.

How has this matter been at the West? This perfect avalanche of excitement and feeling in relation to railroads, which seemed to pervade the whole community here, found its way to the West. And what was the result? Repudiation after repudiation, and disgrace after disgrace; and I would by no means bring the ancient Commonwealth of Massachusetts within that vortex of repudiation which has been exhibited all over the Western States.

But I would go even farther than to prohibit the loaning of the State credit. I would not only say that the legislature should not loan the State credit, but I would not permit the legislature to authorize any municipal corporation to loan its credit to, or take stock in, any corporation whatever.

How came this matter of repudiation to be so extensive at the West? I think I know something about it. The burnt child always dreads the fire. I had a slight visitation in reference to that matter, and perhaps I am not exactly a disinterested witness in relation to it.

Mr. WILSON. I wish to ask the gentleman if he will have the goodness to inform the Convention which of the Western States have repudiated their debts?

Mr. HATHAWAY. Why, Mr. President, I thought what I alluded to was a matter of public notoriety. It will be recollected that Pennsylvania did not pay her interest. I suppose the gentleman would not call that repudiation. There are some of the Western States which, in a like manner, have declined to pay the interest upon their liabilities. I call that repudiation, but I presume the gentleman would not. The difference between us is a mere difference of words, and I am sure we shall not quarrel about that. He knows what I mean, when I speak of repudiation. I do not say that the people of these States refuse, absolutely, to pay their liabilities, but they did decline to pay the interest upon them, and that I regard as an element of repudiation.

Now, Sir, in reference to these Western States, how came they by these State debts? Just look at the history of the matter. It was not in consequence of the great internal improvements by the States themselves. It was not in opening these great public channels of communication, but it was because the people of the various sections of those States seemed to have an absolute mania for these improvements. Corporation after corporation was authorized by the legislature, supposing that they would be equally beneficial with those great projects which the State had entered into. And what was the consequence? Why individuals connected with those corporations were the sufferers. I speak what I know in reference to this matter, for I have been a sufferer, to some extent, from that mania in one of those corporations. Under Providence, it was my fortune to have a little patrimony, located within the limits of one of them, and it happened to be real estate, and I felt the effects of it. Every town, every county almost, became connected with these projects for internal improvements. And what was the consequence? Why individuals failed in their bonds. They would carry their roads through certain sections, and then bring up. Then they would go into the next county, perhaps, and say: "If you will take half a million of our stock, or get leave of the legislature to authorize you to loan your credit to that amount, one or the other, you may have the railroad through your county. Otherwise, we must go through the adjoining county." Well, Sir, this mania continued to prevail among the people—

Here the hammer fell, the half-hour, fixed by order of the Convention, as the limit for speeches, having expired.

Mr. SCHOULER, of Boston. The gentleman from Freetown, (Mr. Hathaway,) has spoken about every State, except the State of Massachusetts.

Mr. HATHAWAY. I was going to speak about that, when the half-hour cut me off.

Mr. SCHOULER. Well, Sir, I do not know what the gentleman would have said, if the half-hour had not cut him off, but I wish to make a remark in relation to what he has already said. In the first place, I understood him to say that he had always been opposed to loaning the State credit to private corporations, though he had never committed himself fully upon the mortgage question. He had never expressed his opinion definitely, upon the question of mortgaging the farms of the people.

Mr. HATHAWAY. If the gentleman will permit me, I will explain. What I did say was, that in former times, there was a question before the people in reference to the matter of which the gentleman speaks, but whether it was right or wrong, I had nothing to say.

Mr. SCHOULER. Now I wish to say a word to the reformers of this Convention. A great deal has been said about the reform party in this Convention, and, as I place myself in that category, I wish to address myself to the reform members of the Convention.

A MEMBER. As brothers?

Mr. SCHOULER. Yes, as brothers. Now, Sir, we have made some improvements in our Constitution. But that Constitution has yet to receive the sanction of the people, before it becomes the organic law of the Commonwealth. It seems to me that there is such a disposition to load it down with all manner of local questions, that you will kill the Constitution before the people. The very fact of putting into your Constitution this provision, which you are considering, will, in my judgment, deprive it of a great many votes. In certain parts of the State, disguise it as you will, this Hoosac Tunnel question is one which will have an influence on the acceptance of the Constitution we may submit, if it contains a provision incorporated for the purpose of preventing the aid of the State being given for that work. In the northern and western portions of the State, there is a very strong feeling in favor of that Tunnel, and if you place in your Constitution a restriction which shall prevent the majority of the legislature, and a majority of the people of the State, from expressing their opinions upon the subject of loaning the credit of the State to aid in its construction, a large class of the people in those sections of the State, will vote against your Constitution for that reason. I want the reformers of this Convention to consider that fact.

Now, Sir, I want the majority of the legislature to settle this question, just as they have settled it under the present Constitution, in years past. However much we may talk about the improvidence of other States, there has been no improvident legislation in Massachusetts upon this subject of the credit of the State.

I hold in my hand the Report of the Auditor, from which I find that the whole amount of responsibility upon the part of the State, to the different railroads of the State, is about $5,000,000, and here are the details:—

| | | |
|---|---|---|
| *Western Railroad—* | | |
| Due April 1, 1868, . . . | £135,000 | |
| " Oct. 1, 1868. . . . | 337,500 | |
| " " 1, 1869, . . . | 90,000 | |
| Due April 1, 1870, . . . | 180,000 | |
| " " 1, 1871, . . . | 157,400 | |
| | £899,900 is | $3,999,555 56 |
| Add for exchange, $320,000. | | |
| *Eastern Railroad—* | | |
| Due July 1, 1857, . . . | $100,000 00 | |
| " Sept. 1, 1858, . . . | 100,000 00 | |
| " April 1, 1859, . . . | 300,000 00 | |
| | | 500,000 00 |
| Norwich and Worcester Railroad, due July 1, 1857, . . . . . | | 400,000 00 |
| Andover and Haverhill Railroad, now Boston and Maine, due August 1, 1857, . . | | 100,000 00 |
| Boston and Portland, now Boston and Maine, due August 1, 1859, . . . . | | 50,000 00 |
| | | $5,049,555 56 |

Now, Sir, the State has a clear mortgage upon every dollar of property belonging to every one of these railroads for the money, or rather the credit she has loaned them, amounting, in all probability, to not less than from $20,000,000 to $25,000,000. Does that look like repudiation on account of these improvements? Sir, there is not a man in this Convention; there has not been an attempt in this debate, to show where the State of Massachusetts ever run any risk, or that she is likely to lose a single cent, by any act of her legislature in loaning the State credit.

Now, Sir, I am ready to leave this question to the legislature. If it should appear that there is any portion of the State which has not enjoyed the benefit of any assistance upon the part of the State to develop its resources, and the loan of the credit of the State is necessary to carry out any great project which they have in view for that purpose, I say, in God's name, let them have it.

Sir, I say—and I say it without fear of contradiction—that if the State of Massachusetts had to pay every cent of scrip to which she has put her name, for the encouragement of these internal improvements, it would be money spent to better advantage than any ever spent since she became a State. It has raised up the State; it has added to her population; it has added to her taxable property as much as $200,000,000. And if we had not lent the aid of the State, or, at least, if they had not been carried out—and it is exceedingly doubtful whether they would ever have been carried out without the aid of the State—we should have fallen in every respect far behind what we are now; we should have fallen farther behind, in proportion to our former position, than any State in the Union.

I am surprised, that at this late day, when we have the light of experience, that gentlemen should talk about crippling the energies of the State, by placing a provision in our Constitution which shall deprive the legislature—by depriving a majority of the people of the State, through the representatives in the legislature—of the power of

expressing their opinion upon this subject. I am opposed to any such provision. I hope the vote of the Convention, by which the provision now before us was adopted, will be reconsidered, and that the whole matter will be left in the power of the legislature.

It will be found very difficult, in practice, to get two-thirds of the members of the legislature to go for any measure of that kind. If such a provision had been incorporated into our present Constitution, in all probability, we should never have had the Western Railroad at all. True, it was an experiment. We could not tell how it would work. But, Sir, when it came to be put through, and to develop the wealth and resources of the Commonwealth, we found that we had made a good experiment. But now we have the light of experience. We know what can be done, by what has been done. And yet, gentlemen are afraid to trust the majority of the legislature, to say whether they will loan the credit of the State, or not.

Sir, it seems to me that it comes with a rather bad grace from the members of the Convention, from the city of Boston, and from members who come from those portions of the State which have been enriched by the credit of the State, to come here and try to cramp the energies of the Commonwealth; to try to place a bridle upon our necks, and to prevent us hereafter from ever assisting that portion of the Commonwealth which has never received one single dollar for the purpose of developing its resources. I am in favor of treating every portion of the Commonwealth with equal liberality.

Now, Sir, the gentleman from Freetown, (Mr. Hathaway,) and every other gentleman who has spoken here upon the same side of the question, will find it impossible to make out any argument in favor of the provision now before us, from any act of the legislature of Massachusetts upon the subject. If the legislature had been improvident, that might have furnished some ground for an argument. But it has not. The gentleman from Freetown told us of three millions given up by the State of New York, which she had loaned to the Erie Railroad. Why, Sir, if that road could not have been built without the aid of that three millions of dollars—and I take it for granted that it would not have been built—I ask any gentleman here whether it was not a good investment upon the part of the State of New York? Where could she have invested her three millions to better advantage? And I may say just as much for the Erie Canal, which has been so great a source of wealth and population both to the State and city of New York. The whole West have become tributary to her. And, Sir, we wish to avail ourselves of some portion of the wealth of these Western States.

In regard to the State of Illinois, every one knows there was a system of log-rolling carried on in her legislature, which was the cause of all the trouble. In order to get one project through the legislature, members were obliged to vote for others, in which other members were interested, but which were of no public interest or importance whatever. That is the way in which these Western States have become so deeply involved in debt. And I believe repudiation has taught them a lesson in this respect. But, Sir, these States are rapidly filling up, and the time will come when these very improvements, which, up to the present time have not been productive, will become productive, and they will more than compensate for all the losses they have occasioned. But here in Massachusetts we have involved ourselves in no such difficulties. Everything has gone on well, and why not allow the system to remain as it is?

The gentleman talks about experimenting with the credit of the State, and experimenting with the people's money. I will ask him whether it is not, at least, as bad to experiment with the Constitution of the State? He proposes to experiment with the fundamental law in reference to this subject, and I ask him whether the credit of the State is any more sacred than the fundamental law of the State?

Sir, I am willing to stand by the past experience of the State, and I believe the people are willing to stand by it. But I should like to ask the gentleman from Freetown, whether he can tell me if many of these appropriations of other States did not pass by a majority of two-thirds? I think the probability is, that at the time when there was such a rush for these internal improvements, many of the appropriations were passed by a two-thirds vote? There are a number of States which a few years ago were repudiating States, but one by one they have got back again. Pennsylvania was one of the repudiating States, but she has entirely recovered, and I have no doubt, in a great measure, in consequence of these very internal improvements which were the cause of her repudiation. Now she is not a repudiating State. I thought a few minutes ago that Mississippi was the only State in the Union that actually repudiated, but I think Illinois has once not been able to pay her interest, and she will, therefore, have to be placed in the same category. But, Sir, that State is filling up rapidly, and I doubt not the time will come, and within ten years too, when the State of Illinois will be able to pay every cent

of principal and interest upon her public debts. It cannot be otherwise.

I had no intention of speaking upon this subject, but I believe it to be a question of considerable public importance; and I believe if the Constitution goes out to the people with this provision in it, it falls dead. That, of itself, will engender such an opposition as to defeat it. The whole people on the line of the railroad for which this loan of the State credit is now asked, will go against it. In the northern part of Berkshire, in the whole of Franklin, in parts of Hampshire, in the city of Boston, and scattered here and there all over the State, there is a class of men who are determined that the credit of the State shall be lent to that corporation, and if this Convention undertakes to go out of its way to prevent it, they will vote against the Constitution.

Again, I ask the reform members of this Convention if they are ready to put this lump of lead round the neck of your Constitution, which will sink it so deep that you will never be able to find it again? I trust not. I go for the reconsideration of this vote, and for leaving the Constitution precisely where it now stands in regard to this subject. I ask that the people in their representative capacity may decide the matter for themselves, and that this Convention shall not undertake to do that for them.

Mr. BISHOP, of Lenox. Mr. President: On Saturday last, upon the motion of the delegate from Boston, (Mr. Giles,) this Convention resolved that "the legislature shall not have power to grant the credit of the State to any individual or corporation, without a two-thirds vote of the House of Representatives and the Senate in its favor."

The delegate from Charlestown, (Mr. Thompson,) has moved a reconsideration of the vote adopting this resolution. To its general object and policy, I have no disposition, and am not called upon by the motion for reconsideration, to object. The power of the legislature to pledge the credit and good faith of the people, if not a questionable, is, in my opinion, a very limited one. I deny its power, to aid by this mode, enterprises of a merely private character. It has no authority to sign and endorse negotiable notes, or draw and accept bills of exchange, in the name of the State, for the accommodation of individuals, mercantile or manufacturing firms, or corporations, engaged in manufactures, navigation or commerce, for their benefit solely, or to make the people their copartners in business. From this proposition, no well-informed legal gentleman would, I think, dissent. If there be danger of the people's becoming involved, through the act of their legislature, in the hazardous enterprises of navigation, manufacturing, banking, &c., it is wise to dispel it at once, by some decisive constitutional restriction. No danger of this sort, however, is apprehended. The sole question is this, shall the State aid by its credit, those improvements of a *public* character, now made and to be made by corporations for the benefit of the people, and which can be authorized only by the legislature. Improvements of this character, when too vast for individual capitalists, are, in other States, made, owned, and carried on, by the people themselves. It is thus, with the great canals of New York and Pennsylvania. They are the work, and under the administration, of the State. This State has adopted a different policy, whether safe and prudent, wise or unwise, is too late now for discussion. The policy is fixed and settled, and has now gone too far, perhaps, to be arrested. Whether the people should not have retained in their own hands those great and perilous powers which they have imparted to corporations, and have done on their own account and at their proper charges, what they have employed these corporate bodies to do for them, is a subject past the period of debate and inquiry. The instrumentalities of effecting the great and necessary public facilities, which bring about the intercommunication of Massachusetts with the rest of the world, are established. I can say with truth, to my much respected friend from Taunton, (Governor Morton,) this was no policy of yours or mine. That day may yet turn out to be an evil day, when the legislature of this State carved from the sovereignty of the people, so much thereof, as relates to railroads, and dished it out to corporations. This system of legislation, if pursued in relation to other matters, as it has been in relation to railroads, might, in time, and at some day not very far away in the future, strip the people entirely of that portion of their sovereign power by which they may now plan and execute for themselves, and fatally weaken and abridge the means which they may be required to use hereafter, by the frequently occurring and constantly varying demands and exigencies arising from progressive changes and improvements. Such grants, fixed and rendered irrevocable by the doctrine of vested rights, as that doctrine has been expounded and enforced, may leave the people mere spectators of the achievements of their own delegated strength, and like Sampson, shorn and shaven, they may wake up and find their strength departed, and themselves bound down by Philistines, which their own charters have made.

The people demanded these improvements.

The world demanded them. In space, they are local. In usefulness, however, as parts of a great system, they are world-wide. The people have chosen to make them by chartered companies, giving to these companies, for their hazards and investments, an equivalent in special benefits and exclusive privileges. It is solely upon the ground of their having undertaken the State's business, that they are entitled to the State's aid and favorable regard and care—upon the ground, that having assumed the people's obligations, they are entitled to their encouragement and support. Now, Sir, I am opposed to the restriction of this encouragement and aid, which the resolution proposes. I regard it as thoroughly prohibitory; and, if not so, as partial, inequitable, unjust—defeating the reasonable expectations which have been raised. No system of public improvements should be adopted by the State, which is not general; and in considering the question before the Convention, the relative claims and present condition of the several sections of the State, should be regarded. If the system, in order to its completion, ought to be farther extended, if certain parts of the State are not provided with the railroad facilities accorded to others, whose claims are no better, some sound reason should be adduced for withholding them. Impracticable schemes and embarrassed finances would unquestionably be good cause for prohibiting future, or withholding present assistance. If the past shows recklessness, and improvidence, or wastefulness, limitations should be placed upon the exercise of legislative power. With the present influence of railroad corporations over legislative proceedings—an influence, not peculiar, but common to them and all men, and bodies of men of great means and control, I regard the vote passed, not as a restriction, not as a limitation, but as a full inhibition. It is proposed that the Senate consist of forty members. Fourteen only are required to stifle all action upon this subject. It is the interest of existing railroads to prevent their multiplication—to monopolize, if I may use the word, and secure to themselves the entire transportation of men and merchandise; and can they not, with all convenient ease, without apparent activity, or semblance of trick or artifice, throw into that body, of those personally interested, enough to prevent competition by new roads, and defeat every project, which, if carried out, might diminish their profits? The answer is obvious. It would place the enlargement and multiplication of this branch of public improvements, entirely under the control of existing corporations, and to them, in the first instance, would the people have to apply, to extend these great facilities, now made necessary to all departments of industry. In short, upon this great subject, intimately interwoven with the leading interests and prosperity of the country, corporations virtually would legislate, and not the people, through their representatives. Is not this, by indirection, to be sure, but substantially and effectually, a grant by the people, through their legislature, of a part of their sovereign power and right of eminent domain? The grant may hereafter be revoked, if it does not get to be too strong, but while in force, are not that power and that right suspended. I am confident, that such would be the effect of the proposed restriction—that while it takes a measure of power from the legislature, it imparts exactly the same measure to existing corporations. Sir, I am not for such a limitation of legislative action. I am not for a prohibition, which passes over all, which is prohibited to bodies which have had their full share of legislative succor—which have had all they could ask—all, which is necessary to the completion and success of their enterprises. I am for no such constitutional restriction upon the government, as shall operate as a grant of the patronage and aid left to it—to those, to whom aid and patronage have been meted out in generous and abundant measure. "To him that hath shall be given," may be sound theology, but "from him, that hath not, shall be taken away even that which he hath," certainly requires to be examined, before being adopted, as a rule in the distribution of legislative favors. If the chartered powers and immunities, through which we have chosen to construct our public works, operate safely and beneficially, make them general, as the public good requires. If they prove productive of evil, should not that evil come to us diluted by diffusion. I discuss this question by itself, disconnected entirely from any of the other modes proposed to abridge legislative authority over public credit. I look at it, as an abstract proposition, apart from any particular railroad, which now is, or is proposed to be made.

Much has been said about the Western Railroad, and the Hoosac Tunnel. They are entitled to no specific consideration in the debate upon the proposed limitation. They may be parts of a whole, which may have relation to it. I certainly entertain no hostility to the first, and would not favor the execution of the other, if it be impracticable, or not called for by the general welfare, and whether it be practicable, or would be of public benefit, I certainly am not advised. These questions require more close and accurate investigation than one not specially concerned is inclined to give, or can give. If those mountain barriers can

be perforated, so as to admit to a passage through, a locomotive and its train, without great and disproportional expenditures, and the voice of the people call for it, and they can be assured by the severest inquiry which they may make, that no loss will be incurred, let the mountains be tunnelled. Pledges, as solid as the bonds of the "solid men of Boston," should be required, if the State, by her credit, gives aid. It is right that such pledges be required, for although a public work, it is to be executed mainly upon the judgment of individuals, and largely by their capital, who carefully compare and balance the privileges granted with the risks assumed, and should stand by them.

It is said that the Western Railroad is not only an exhibition of the active, intelligent enterprise, but a standing monument of the munificent wisdom of the State. It has, indeed, thus far accomplished all the purposes of its creation; all that it promised, it has doubly fulfilled, and more. Its security is pronounced ample, firm as "terra firma"—subject to diminution only by earthquakes or volcanoes. Stripped of it, the State would be without one of its greatest sources of prosperity, and, so long as it shall be administered as it has been, with reference to the public accommodation and wants, and economically and efficiently; so long as it shall, as it has done, appoint for its conducting officers gentlemen, courteous, kind, and attentive, to whom we can commit our wives, our children, ourselves, assured of exposure to those casualties only, which come in spite of human vigilance and forecast, it will retain, as it holds, the special favor and regards of the people, and their government. It has, however, been created for special purposes. Its rights and its powers are limited and defined. Other rights, it cannot claim, other powers it cannot exercise, without transcending and violating its charter, and exposing it to forfeiture. It is said that this corporation is here in the Convention—that it sat with the last legislature, during its protracted session. It has no business here. It had no business there. It has no power to make constitutions or laws, except for "the orderly conducting of its own business." It has a legal existence only—is a legal person, with specific functions, created for determinate purposes, and should it assume other offices, or attempt other purposes, its claim to exist would and should cease. It is enough that its stockholders have and retain their several individual rights, and can defend and protect their interest, as others may, whether that interest be in lands, chattels, or stocks. Its officers, like other men, are eligible as delegates and legislators, and if, like others, they are jealous and watchful of their rights, the corporate body, of which they are members, would hardly be obnoxious to censure. When corporations shall appear voluntarily, as such, in either department of the government, expending their funds and using their powers to control its proceedings in matters not within their charters, and attempt to arrest public improvements, cripple private enterprises, or get rid of lawful competition, the time will have come, either for their entire disfranchisement, or for severely stringent circumscriptions, for the world is old enough to have learned, that if there be such a thing as a legal conscience, it has no sting to it. To those who see imminent perils in the factitious powers created by special legislation—powers which set at defiance individual competition, and are strong and dangerous because they can do so, this consolation, at least, is left: that thus far they have been employed, with few exceptions, by honorable men, who know as well their obligations as their rights, and are willing to fulfil them. May a wholesome jealousy watch and guard them, till men, single-handed, with private capital, shall be able to cope with them, as I trust in the revolutions of business they may be, or until a system of general laws, by their impartial operation, shall have placed them upon common ground.

That the inhibitory restriction proposed, should have found an advocate among the delegates from this city is most wonderful. That every one of them should be found prudent, cautious, in favor of a reasonable, and even a stringent limitation, is not surprising. They are "solid men," so all believe—so said the oracle. The industry and prosperity of city and country are compactly interwoven. The interest of mart and field are almost identical. They should be brought, if possible, into close proximity. The heart beats, not for itself alone, but for the extremities, and their twenty terminals. Boston is not Boston, for her own sake only, but also for every mountain, where the chopper builds his cabin—for every hoof-trod hill-side—for every corn-clad valley. Her citizens should coöperate with those of the country, in all reasonable ways, to enable the latter to come here, at the least expense, and in the shortest time. Fears are expressed of centralization. Centralization of government is, indeed, to be feared, and stout resistance to it should be made. No man, unless it be constitutionally delegated, should have more political control, than belongs to him individually. He is one only of many equal parts, a unit in the whole number; and no municipality or city should be suffered to exercise any more of legislative or administrative influence, than its just popular dividend. Busi-

ness centres, however, have been, and always will be, so long as streams unite and form navigable rivers, and there are found upon the shores of the ocean, at wide intervals only, secure retreats from its storms. Boston is one of these central points, where land meets sea, in safe and commodious harbor—where landsmen meet seamen, and will always meet them—where they interchange the necessities, conveniencies, and luxuries of life, and where, I hope, there will always be an interchange of material things not only, but of the sentiments of kindness, respect, confidence, and hearty good-will. Conventionalities may obstruct the ease and frankness of intercourse, may generate castes and classes, may canker the hearts of the exclusives with pride, and tincture the spirits of the excluded with envy. Conventionality and jealousy are everywhere. They are incident to humanity, and among the diversified forms in which human folly and human weakness show themselves. Those who institute invidious comparisons between city and country, claiming for the one all the wealth and munificence, for the other all the solid intelligence and stern virtue, do a positive evil, by postponing the day, when well-bred intercourse and cordial good fellowship will convict each of mistake, and lead to the mutual correction of errors. Away with all factitious social distinctions. There is no place for them among the serious actualities of life—no time for them with those, who by steam and railroad would bring the world into one neighborhood—into one common feeling of mutual confidence and love. Leave such silly matters to brainless men and idle women. An avenue from every section and corner of the State, if it be called for, and will pay, should be opened to her great commercial capital; and it should no longer be complained of by the dwellers on the western mountains, that it costs double to reach their own cherished commercial capital, to what it does to go to that of a neighboring State, at a greater distance from them. Sir, what can be done, with full assurance of no consequent loss to the State, in the way of reaching this city cheaply and quickly, should find no obstacles here or anywhere.

Why, Sir, from the western part of Massachusetts, we come to Boston, thank Heaven, much more readily than we did; but it is a fact, that in order to reach our own commercial capital, we pay four hundred per cent. more than we are obliged to pay in order to reach a great commercial capital of another State, at a greater distance from us. There may be physical difficulties in the way, which cannot be removed; and all that we ask is the removal of every obstacle, the filling up of every valley that can be filled, the lowering of every mountain which can be brought down, that we may reach our own commercial capital, transact business with our own citizens, and derive our full benefit from the fact that we have a great commercial city which we love, whose interests we shall cultivate, and with which we shall forever be connected.

Mr. SUMNER, for Marshfield. Mr. President: I have no desire to enter upon the broad discussion which has been opened by the question now before the Convention. There are considerations, of clear and palpable force, which will determine my vote, and which are as simple as they ought to be decisive. These, with your permission, Sir, I will briefly indicate.

It is proposed, by a permanent provision of the Constitution, to tie the hands of the legislature, so that it cannot hereafter, as in times past, lend the credit of the State in aid of any private corporation; and an amendment has been introduced by my friend from Boston, on the other side of the House, (Mr. Giles,) allowing such loan; but only on the difficult and almost impossible condition of a vote of two-thirds of the legislature. Both of these provisions—the original proposition and the amendment—though differing in form and degree, are identical in principle. They both contemplate a restraint upon the existing powers of the legislature in this regard.

Now, Sir, waiving all question of the propriety of such restraint on grounds of abstract policy, or on grounds suggested by the experience of other States, I believe I may assume, without fear of contradiction, that in times past no crying evil has occurred in Massachusetts from its absence. The credit of the Commonwealth has been rarely lent; and when lent, it has been on sufficient security, and for the general good. Witness the instances which have been adduced in this debate. We are not, then, pressed to this measure by any special experience of evil. We have in no respect suffered from the want of it. No such urgency exists. This is something, and, of itself, in the absence of any commanding principle, may well make us hesitate to depart from the established policy of the Commonwealth. But there is another consideration, to which reference has been already made by gentlemen who have preceded me, which completely disposes of the whole question.

Sir, it is notorious that an application has been recently made to the legislature—in conformity with usage in similar cases—for aid in an important, and, as I believe, practicable work of Internal Improvement, which, when completed, will be a glory to the Commonwealth, and a mighty channel of trade and travel. This application, after

ample discussion, found favor in the House of Representatives, but was rejected, on a very close division, in the Senate—I think by a single vote. But the parties having this grand enterprise at heart, avow their determination to renew it at another session. It is, therefore, at this moment, in the nature of a Pending Question of Internal Improvement, of which the legislature, under the existing Constitution, has jurisdiction. But this is not all. At the very time honorable members were chosen to this Convention, it was then a Pending Question before the legislature. Under these circumstances, and in the absence of any besetting evil, or controlling principle, it seems to me highly impolitic and meddlesome for the Convention to undertake, directly or indirectly, to deal with it. Directly, you would not; indirectly, you should not. On a question thus peculiarly circumstanced—standing by itself, and unlike any other now before the Convention—Public Opinion should be left to operate in its customary channel, without any impediment or breakwater from us.

Sir, I am against the proposition on two grounds; first, because it is not vindicated by any obvious principle, or by any ruling necessity, or even expediency, founded upon the experience of our Commonwealth; and, secondly and chiefly, because, notwithstanding its generality of form, it is practically an offensive interference with a Pending Question of Internal Improvement, which we were not summoned to determine.

Mr GILES, of Boston. I ask the indulgence of the Convention for a few moments, to express some of the sentiments which I have in relation to the resolution now before the Convention. It so happened, the other day, that I found this question up and under discussion. The general drift of the motions before the Convention, was to place a limit upon the legislative power to grant the credit of the State. With that intention I concurred, but I did not assent to the various propositions to obtain that object. During the vote upon one of them, I framed the amendment which is now before the Convention, and with reference to which, as I understand, a motion has been made, and is now the immediate question before us, to reconsider, and which was offered by my friend from Charlestown, (Mr. Thompson). The object which I had in view in framing that resolution, which was done on the spur of the moment, was two-fold; first, to make it intelligible, and second, to make it in a form which would admit of being easily amended. It therefore provides that the legislature shall not have power to grant the credit of the State, to any private corporation without two-thirds of the House, and two-thirds of the Senate agree to it; and it so stands, that if any gentleman wishes to strike out the provision requiring a two-thirds vote of the Senate, and insert one requiring a majority only, or to strike out the provision requiring a two-thirds vote of the House, and insert a majority, it may be easily done.

I wish now to suggest some reasons upon which I found the expediency of some limitation, and make a few remarks with reference to the points which have been started this morning, in the debate. Mr. President, what is the foundation of this resolution? Is it baseless as a vision or a dream in the night; or has it a foundation in reason? If so, what is it? I say it does stand on a foundation; and that foundation is, first, that the granting of the State credit is no part of governmental action; it is an exception, an extraordinary act, and it is no part of ordinary governmental action to grant the credit of the State to private corporations.

That being one corner-stone of the resolve, I say that the act of granting the State credit, should be guarded farther than the ordinary acts of the legislature, which simply require a majority. The other foundation is, that the history of these grants of the State credit to individuals and corporations in this country, including the government of the Union, and the government of each State in the Union, shows that there is danger of abuse. I am not going into any particulars; I am not going to assert that any particular instance is an abuse; but I do say that it is the conviction of the public mind in this country, and not only in this country, but in other countries, that there is danger of abuse from this power of the legislature.

Then, this being an extraordinary act, and one which is in danger of being abused, it does call for more guards than ordinary legislation, to wit: the majority vote.

The proposition the other day, was to put the question to the people. I opposed it; not upon the ground of any distrust of the people. I said then, and I say now, that if I thought there was not sufficient intelligence in the people to enable them to pass upon any proposition which this Convention should put to them, I would vote to double the school fund again and again till there was. But the reason why I would not put it to the people, was this. I am in favor of internal improvements, as well as my friend for Erving, (Mr. Griswold); I go for them, heart and hand. I always have and always will. I wish these improvements to have the good will of every man in the Commonwealth; and that is the reason why I would never put one of these great enterprises

to the people in a shape that would compel them to take sides for or against it. You put a proposition of this kind to the people, and they are compelled, by all the machinery of caucus and electioneering, and party influences, to take sides for or against it. And what would be the result? Suppose they go for it, and you get the credit of the State. Good. But suppose that half, or nearly half, the people of the Commonwealth go against it, and you do not get the credit of the State. Bad; bad every way; bad, because the corporation has not got the State credit to aid the enterprise, and because there will be thousands of men in the Commonwealth ready to rejoice in the failure, and say that it was but a fulfilment of their prophecies, that they always knew it was a bad enterprise, and must fail. That is the reason why I would never put a part of the people in a position which would make them the enemies of any project for internal improvement. Credit is based on good-will. I wish every one of the improvements in the State to have the general good-will, and the particular good-will, of every man in the Commonwealth.

My friend says, leave it to the legislature. So say I. But not without a limit, because the very legislature to which you leave it, is the identical legislature which will be deeply interested in the question for or against it, and men are but men, and subject to influences, and I am not one to stand here and condemn the fact that men are subject to influences. I agree with the old philosophic doctrine, that man is but a bundle of influences. I assent to the sentiments of Cicero, uttered in the chamber of the Senate of Rome, on a remarkable occasion, when he made a remarkable oration, and was reproached by the demagogues of that city and that day, who said that his knees trembled so that they knocked together in the presence of that august body of patricians; and his reply was: "I did tremble; and my knees did knock together, but not because I feared the face of man, but because I was a man; and I thank the gods that I am subject to influence, because if I am not subject to influence by others, how can I influence others myself."

Now, Sir, it is the part of wisdom not to impeach our Maker, and condemn his arrangement of the human mind and human system, but to take it as we find it, and act wisely in reference to our organic laws, for their action and development. My friend said again, that the experience of this State has been fortunate; that it has not lost a dollar. Agreed. That it will not lose a dollar. Grant it. That it will make, has made, and does make, much money. True. But I do not assent to that policy. I say it is wrong for a State to enter into the business of the people, and take it out of the people's hands. I am for having this business done, but I am for having it done by the people, and if it be successful, I would have the people put the money into their own pockets, and not be obliged to go into competition with corporations aided by the State. Therefore, it is no argument in favor of granting the State credit, that the State will thereby replenish its treasury. If that be good policy, I would say to the gentleman from Lenox, why not go into the issuing and endorsement of bills of exchange, and go into the bonding system, and inspect the board of fancy stocks, day by day. Nobody wishes for that.

One word more, Mr. President, upon the subject of corporation influence upon the legislature. I have called no corporation by name, and I shall not do so—I allude to no individual and to no corporation; that makes no part of my thoughts, or of my argument. My friend from Lenox said that no corporation is here to-day. I wish that were true; but if no corporation is here to-day, why do we hear of any corporations? Now, Sir, I am ready to express the conviction which I have for several years felt; but before I do it, I will state what is hardly necessary for me to state to anybody who knows my course, that I am a friend to corporations—that I have called them, and I still believe them to be, the right arm of the industry and enterprise of this Commonwealth. I could talk an hour upon their beneficent action, and describe the blessings which they have spread through the land, where they have brought comfort and luxury, and have stimulated all the best appetites and tastes of our nature; but I have not time for that. I say they have done what must be done, and what will not be done at all except by associated wealth, in every new country. But there is a period coming, and it has begun in this country, when your corporate production cannot compete, and will not compete, with individual production, and enterprise, and capital, because it can no more produce a yard of cotton cloth so cheap as I can, than the State can do it so cheap as I can. No, Sir; it neither makes the market more than it is, nor has its sensitive hand upon the public pulse to know when to produce, and when to stop—when to buy, and when to sell; and it has, in addition to its ordinary expenses, a whole roll of corporation expenses, salaries, &c. But in reference to corporation influence upon the legislature, what is my conviction? It is this. I speak from what I do know; I am not going to speak from anybody's knowledge, but from that which produces my own convictions; and I say here, to this Convention, and to the people of the

Commonwealth of Massachusetts, that your corporation wealth is, at this day, and at this moment, too strong for your Commonwealth. Your corporation wealth has been increasing, is increasing, and in my judgment, ought to be restrained. Your corporation influence has increased, is increasing, and in my judgment, ought to be restrained. It is too strong for the Commonwealth, and your corporate wealth is too strong for the Commonwealth; and I say that, in my judgment —friend to corporations as I am, and it may go for what it is worth—I say woe to the corporate institutions of Massachusetts, and the corporate interest and the corporate influence of Massachusetts, when, by intermeddling with the legislature of the people, or the conventions of the people, they shall touch and rouse the heart, and muscle, and bone, of the masses of the people to come to the rescue of the people's legislatures and the people's conventions against corporations. Woe to them, when they bring that day upon their heads, and that day they are bringing.

One other point I will allude to. I must go by points or I shall not get through. That is this: I have heard it said by distinguished gentlemen here to-day, and heretofore, that the State credit is to be claimed, is now claimed, and I know it has been claimed from other quarters, independent of the specific merits of the specific cases, merely because the State has granted its credit to others; and every road and every enterprise is in its nature local, and is producing great advantages in a particular locality. The claim comes up; "You have granted it here, you have granted it there, and you ought to grant it again, because you have granted it so and so before." Now, Sir, every road is local; every road must lead somewhere. I will say what was once said by a distinguished man in reference to a western road, the Maysville Road—no road can lead everywhere, except the road to ruin. I do not recognize the solidity of this argument in favor of the State granting its credit, merely because it has done so before; for that would lead us into the maelström of speculation, and if we came out whole and sound, we should have another cause in addition to the innumerable instances which we now have, of grateful acknowledgment to that superintending Providence which is wiser than we, and most wise where we are the least so.

Now, Sir, in regard to the particular number of two-thirds, amend it as you please—make it two-thirds of the House and a majority of the Senate, or the other way, or suppose you adopt anything near two-thirds, anything that shall accomplish this result; when a case comes up, I wish the attention of the legislature drawn right to this point—is this an extraordinary exigency? Is it one that will justify the State in granting its credit? I want it to serve at the same time as a caution to them and to the petitioners, and to support your legislature and your governor; for I do believe that every successive legislature and governor that shall ever honor this State and be honored by it—and I hold that the State and its officers, thus far in its history, to have mutually honored each other—will be thankful for something of this kind in your Constitution. Any basis of representation that is likely to be adopted will result in this, that two-thirds of your House may be elected by about one-half of your people; and that is an idea that is worthy of consideration. This restraint will not, therefore, be like a restraint upon the majority of the people, so far as this is concerned.

Now, with regard to the effect which this would be likely to have if ingrafted into your amendments to the Constitution, when you put it to the people for a popular vote upon its adoption or rejection, that is a thing that I have not looked at; but it is a consideration worthy of being looked at. I would not put anything in which I thought would be likely to endanger that which I deem important and valuable; and I would put nothing in which was not needed to bring the Constitution nearer to perfection. If, therefore, you think that such a proposition would endanger any of its associates, put it separately, so that the people can say yea or nay upon it, and nothing else; and if a majority of the Convention shall deem that its being in their amendments at all will endanger the rest, do with it in your wisdom what you please. I have myself but one course, and that is, to consider every effect within my knowledge of the course of action which I am about to take, and to do as well as I can, according to the dictates of my judgment and my conscience, and put unbounded confidence in the good and judicious action of the people; in other words, I shall do according to what is termed part of the code of a gentleman, and that is, to consider every man a gentleman until he proves himself to be no gentleman, and treat him accordingly; and I shall treat the people accordingly. I will put to them, therefore, what I deem to be best; and if they do not agree to it, they can reject it, as we have agreed they shall. I have no desire to have one improvement in the Constitution carried by connecting it indissolubly with another, when it is of a doubtful character; but I do believe in the expediency of some restriction upon this granting of the State credit.

My friend alluded to the idea that this restriction was in the nature of a cramp; yea, and a

cramp upon the industry of the people. But do I go for any such thing? No, Mr. President. Did I not say to him the other day, lay not the icy hand of death upon the enterprise of the people of this Commonwealth? This enterprise is instinct with trade, with life, and energy; and I said then, as I say now—support, encourage, cherish, sustain that enterprise, here and everywhere. But it is with the enterprise of this community as it is with the leading and dominant spirit that acts in man and in the nation; it is not to be cramped, but it is to be guided, and this is the way in which you are to aid it. Let the flood burst from your mountains, and fall into a course where there are no banks; will it not overrun your plains and devastate your fields? But let it go in such channels as the Maker of the earth has formed for such beneficent streams, and what is the result? It makes a river, bordered with cities and villages; it is then a blessing to the country, for it makes it populous, prosperous, productive, and happy. I claim, therefore, that I go with him who goes the farthest in favor of enterprise and credit, energy and industry, and everything that we deem good; but I claim it to be wise, from past experience and the nature of the case, to impose some restriction upon the granting of the State credit.

I will say to my friend from Lenox, who doubts the constitutionality of any grant, that the Constitution says that the legislature shall have power to enact all wholesome and reasonable laws, and to take private property for public uses. There is the foundation of this policy, and there let it be. It has worked well, and it will work well; but when you come to grant the State credit, which is my credit, and your credit, and his credit, and every man's special and private credit, as well as the associated credit of the whole, then let it be done wisely. Let the instance be such as to commend itself to more than a bare majority, under all the influences which I do not deprecate, but which I expect will be brought to bear upon the legislative body in that particular case; and if the case be a good one, it can command more than a bare majority of the legislature, and it will command the assent of the people. But if it fail, this failure will not destroy its own credit, as a failure under a mere majority might. If it succeeds, it will give you not only the amount in millions, but it will double that amount in the good-will and coöperation of the whole people in your favor. That is what you need—that is what I want you to have—that is what I design to give you, and that is the object of this resolution, so far as my individual mind enters into it. It is in the power of the Convention to do with it as seems just and expedient to them, and I shall be content.

Mr. THOMAS, of Weymouth. Mr. President, this subject has been amply discussed on both sides; every member of this body has probably made up his mind upon the subject, and I therefore move the previous question.

The motion was agreed to.

The question being then taken on reconsidering the vote by which the resolution was ordered to be read a second time, on a division there were—ayes, 189; noes, 87—so it was agreed to.

The question then recurred, on ordering the resolve to a second reading, as amended.

Mr. FREEMAN, of Franklin, demanded the previous question.

Mr. EARLE, of Worcester. I desire to inquire of the Chair, whether, if the main question were not pending, it would not be in order to move for a reconsideration of the vote by which the Convention adopted the amendment which now stands as the resolve.

The PRESIDENT. It would be in order.

Mr. EARLE. I suppose that many gentlemen voted for a reconsideration under the belief that it might be done.

Mr. LORD, of Salem. I move to amend the resolve by striking out the words "two-thirds," and inserting the words "a majority." The resolve now reads:—

That the legislature shall not have power to grant the credit of the State to any individual or corporation without a two-thirds vote of the House of Representatives and the Senate in its favor.

I understand the motion to reconsider, is made with the view of striking out the words "two-thirds" and inserting instead the words "a majority," and if I understand rightly, the President ruled that amendment out of order. Since that time, I understand that the President has reversed that rule, and now rules that such a motion is in order. I only desire to know whether the President considers that motion before the Convention, so that if the previous question be voted down, the question will recur on that amendment, or whether the previous question having been called for at a time when the President ruled the motion out of order, that motion will now stand.

The PRESIDENT. The Chair will state to the gentleman from Salem, the position of the question as it now stands. The resolution is as follows: That the legislature shall not have power to grant the credit of the State to any individual or corporation, without a two-thirds vote of the House of Representatives and the

Senate in its favor. To strike out the words referred to by the gentleman from Salem, and insert those proposed by the gentleman from Monson, would make a change in that to which the Convention have already agreed, and it is not, therefore, in order at this time.

Mr. GRAY, of Boston. I would ask the Chair if the demand for the previous question prevails, and the main question is ordered, whether that main question will not be the passing to its next stage, of the amendment of my colleague?

The PRESIDENT. That will be the main question.

The call for the previous question was sustained.

Mr. CROWNINSHIELD, of Boston, moved, that when the vote be taken, it be taken by yeas and nays.

The motion was agreed to, and the yeas and nays being taken, resulted—yeas, 112; nays, 199—as follows:—

YEAS.

Aldrich, P. Emory
Appleton, William
Austin, George
Barrows, Joseph
Beach, Erasmus D.
Beal, John
Bliss, Gad O.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Briggs, George N.
Brown, Hiram C.
Brownell, Frederick
Cady, Henry
Carter, Timothy W.
Case, Isaac
Chapin, Chester W.
Clark, Henry
Cogswell, Nathaniel
Copeland, Benjamin F.
Crane, George B.
Crowninshield, F. B.
Davis, Solomon
Deming, Elijah S.
Denton, Augustus
Doane, James C.
Dunham, Bradish
Earle, John M.
Eaton, Lilley
Ely, Homer
Fitch, Ezekiel W.
Fowle, Samuel
Gardner Henry J.
Gilbert, Wanton C.
Giles, Joel
Gray, John C.
Hale, Artemas
Hallett, B. F.
Hammond, A. B.
Hapgood, Seth
Haskell, George
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Hersey, Henry
Hobart, Aaron
Hopkinson, Thomas
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Knight, Hiram
Knight, Jefferson
Lawton, Job G., Jr.
Lincoln, Abishai
Littlefield, Tristram
Lowell, John A.
Miller, Seth, Jr.
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Newman, Charles
Nichols, William
Norton, Alfred
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Noah C.
Rantoul, Robert
Rawson, Silas
Reed, Sampson
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Stevens, Granville
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Tilton, Horatio W.
Turner, David
Turner, David P.
Wallis, Freeland
Walker, Samuel
Ward, Andrew H.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wilbur, Daniel
Wilbur, Joseph
Wilkinson, Ezra
Williams, Henry
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Nathaniel
Woods, Josiah B.
Wood, Otis

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Alley, John B.
Allis, Josiah
Alvord, D. W.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Baker, Hillel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Geo. S.
Braman, Milton P.
Brinley, Francis
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Chandler, Amariah
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clark, Ransom
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cook, Charles E.
Cooledge, Henry F.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Day, Gilman
Dean, Silas
Denison, Hiram S.
Duncan, Samuel
Durgin, John M.
Eames, Philip
Easland, Peter
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowler, Samuel P.
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hapgood, Lyman W.
Harmon, Phineas
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra 2d,

Henry, Samuel
Hewes, James
Hewes, William H.
Hillard, George S.
Hindsdale, William
Holder, Nathaniel
Hood, George
Hooper Foster
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Hunt, William
Huntington, George H.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Kuhn, George, H.
Ladd, Gardner P.
Ladd, John S.
Lawrence, Luther
Leland, Alden
Lincoln, Frederic W., Jr.
Livermore, Isaac
Marble, William P.
Marey, Laban
Marvin, Abijah P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Moore, James M.
Morton, William S.
Noyes, Daniel
Ober, Joseph E.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Park, John G.
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Phelps, Charles
Phinney, Silvanus B.
Plunkett, William C.
Pomroy, Jeremiah
Pool, James M.
Prince, F. O.
Putnam, George
Read, James
Rice, David
Richards, Luther
Richardson, Nathan
Richardson, Samuel H.
Sanderson, Amasa
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherril, John
Sleeper, John S.
Souther, John
Spooner, Samuel W.
Stevens, William
Sumner, Charles
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tower, Ephraim
Train, Charles R.
Tyler, William
Underwood, Orison
Upham, Charles W.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Walker, Amasa
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershom B.
Wheeler, William F.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilder, Joel
Wilkins, John H.
Wilson, Henry
Wilson, Milo
Winn, Jonathan B.
Wood, Charles C.
Wood, William H.

ABSENT.

Abbott, Alfred A.
Adams, Shubael P.
Allen, Parsons
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Beebe, James M.
Bigelow, Jacob
Blagden, George W.
Bliss, Willam C.
Bradbury, Ebenezer
Brewster, Osmyn
Brown, Adolphus F.
Buck, Asahel
Bullen, Amos H.
Chapin, Daniel E.
Choate, Rufus
Clark, Salah
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Crockett, George W.
Crosby, Leander
Crowell, Seth
Curtis, Wilber
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Dawes, Henry L.
Dehon, William
DeWitt, Alexander
Dorman, Moses
Easton, James, 2d
Eaton, Calvin D.
Fiske, Emery
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner, Johnson
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Greene, William B.
Greenleaf, Simon
Hale, Nathan
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Huntington, Asahel
Huntington, Charles P.
Hyde, Benjamin D.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kinsman, Henry W.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Marvin, Theophilus R.
Mixter, Samuel
Monroe, James L.
Morss, Joseph B.
Nash, Hiram
Nayson, Jonathan
Nute, Andrew T.
Packer, E. Wing
Paige, James W.
Parker, Samuel D.
Parsons, Thomas A.
Payson, Thomas E.
Perkins, Jonathan C.
Pierce, Henry
Powers, Peter
Preston, Jonathan
Putnam, John A.
Richardson, Daniel
Ring, Elkanah, Jr.
Rockwell, Julius
Sampson, George R.
Sargent, John
Sherman, Charles
Smith, Matthew
Stacy, Eben H.
Stetson, Caleb
Stevens, Charles G.
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Increase
Swain, Alanson
Thayer, Joseph
Tileston, Edmund P.
Tyler, John S.
Upton, George B.
Wales, Bradford L.
Wallace, Frederick T.
Wright, Ezekiel

Absent and not voting, 107.

So the resolution was not ordered to be read a second time.

On motion, by Mr. WILSON, of Natick, the Convention then adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

### *A Committee Appointed.*

The PRESIDENT announced the following gentlemen as constituting the Committee, under the order adopted by the Convention, relative to legal remedy to representatives of persons deceased by railroad accidents: Messrs. Hallett, for Wilbraham, Stevenson, of Boston, Haskins, of Medford, Richardson, of Middletown, and Fowler, of Danvers.

*Vacancies Filled.*

The PRESIDENT appointed Mr. Knowlton, of Worcester, to fill the vacancy in the Committee, on Reporting and Printing the Debates and Proceedings of the Convention, occasioned by the death of the Hon. F. R. Gourgas.

Also, Mr. Bird, of Walpole, to fill the vacancy in the Committee, on the Preservation of the Records.

*Orders of the Day.*

On motion of Mr. BROWN, of Medway, the Convention proceeded to the consideration of the Orders of the Day.

*Reconsideration.*

The first subject on the Orders of the Day, was the motion of Mr. Marvin, of Winchendon, to reconsider the vote by which the Report of the Committee on the Qualification of Voters, was accepted.

Mr. MARVIN, of Winchendon. I ask the indulgence of the Convention for a few minutes, to explain the design which I had in offering this order. The order, as will be seen, requires that all persons who may attain to the right of voting in the year 1856, shall be able to read the Constitution of this Commonwealth, printed in the English language; and, as the object which I had in view in offering it, has been much misunderstood, I have desired the privilege of briefly stating what that object was. This is the reason why I made the motion to reconsider.

From conversations which I have had with various gentlemen, I believe that there is very little probability of this order being passed, and I suppose, probably, the chief reason is, that it is too far in advance of the times. I merely wish to explain it.

The object, as will be seen, is so to provide in the Constitution, that from and after the year 1856, all persons admitted to vote for any officer in the State of Massachusetts, shall be able to read the Constitution of the Commonwealth, in the English language; because, I think if they can read that, they can read almost anything else. The design is not, as many gentlemen suppose, to restrict the right of suffrage at all; and the order was submitted to the Committee for the Encouragement of Literature, because the object of it was the promotion of education. It did not, by any means, look to the restriction of the right of suffrage. I will go as far as any gentleman, in extending that right; but it seems to me, in adopting this order, we put into operation a strong motive to induce every person, and especially every man, to learn to read. It would not affect any person who has the right to vote at present, nor any one who might become entitled to the right of suffrage previous to that time. All young men, who are eighteen years of age, and upwards, would have three years in which to learn to read; and, as we have the means of education provided for all who choose to avail themselves of it—both children and adults—there is no reason why every man in the Commonwealth, in the course of three years, should not be able to read the English language. That was the object I had in view, and it appeared to me to be an object highly worthy of our attention, if, by any possibility, it could be reached.

Some few years ago, it was recommended that all persons should be compelled to send their children to school. I suppose, however, that that could not be done. Indeed, I suppose it never would be done—at least, I hope not, for I dislike compulsion in this matter; but if a provision of that kind was made, there would be an inducement held out to every man to learn to read.

I will not dwell upon the subject longer, except to say that nothing would contribute more to the honor of Massachusetts, than that every man who was a voter was able to read; and secondly, that having such a provision in our Constitution, it would make every man who might come to our State from other countries, truly American. I do not mean by this, that we should do anything to prevent foreigners from coming amongst us; I hope that every foreigner who comes into the country will be welcomed by us with cordiality—that they will feel that they are at home here, and that they will learn our customs, and support and honor our institutions.

Having made this explanation, and understanding that there is no hope of this order being adopted, I will now move to lay the motion to reconsider on the table.

The motion was accordingly laid upon the table.

*Harvard College.*

On motion by Mr. KNOWLTON, of Worcester, the Orders of the Day were laid upon the table, and the Convention resolved itself into

COMMITTEE OF THE WHOLE,

On the Report of the Committee on Harvard College, Mr. Morton, of Taunton, in the chair.

The resolution reported by the Committee, was read, as follows:

*Resolved*, That the Constitution ought to be amended by adding to chapter 5, section 1, the following article, to wit:—

The legislature shall forever have full power

and authority, as may be judged needful for the advancement of learning, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the President and Fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted for the purposes of education in this Commonwealth.

Mr. KNOWLTON, of Worcester. Mr. Chairman. It would have been more agreeable to me, and more just to the cause, if the duty of sustaining this Report had been assigned to one of larger experience in deliberative assemblies. But trusting to the forbearance of the Convention, I shall present some of the considerations which seem to me to be pertinent to the subject. My colleagues of the Committee will be able to supply my deficiencies.

Harvard College, Sir, is not alone a question of to-day; but in many of its phases it is a question of the past and of the future. It covers a period of more than two centuries of our history; starting from a point almost back to that in which the germ of our civilization, now so largely developed, was perilled in a bleak winter, upon a desolate coast. The college was, undoubtedly, among the ideas which the colonists brought with them, for its foundation was laid only sixteen years after the landing at Plymouth. Something of history, as well as of legal and moral right, must therefore enter into the discussion of this resolution.

The rights of the Commonwealth in the college, and the power of this Convention to interfere with its organization, depend largely upon certain facts in history. Those facts must arrange themselves around one or two points: first, who was the founder of the college; and second, what were the rights of the founder, and were they ever transferred or surrendered?

These two questions involve two theories, the practical results of which are wide asunder.

If John Harvard was the founder of the college, by his own will or the will of the government, and his rights as founder were never transferred or surrendered, then the power of this Convention to touch the organization of the college, may perhaps be questioned. But if, as I believe, the Commonwealth was the founder, and has never parted with its rights as founder, then the whole subject is clearly within the power of this Convention. We may do what we please, and as we please, with the college, provided we do not subvert or contravene the original purposes of its foundation.

It does not become me, Mr. Chairman, in this Convention, or elsewhere, to assert what is law and what is not law, upon a question of so much importance as this. But I understand, Sir, that our laws and the laws of England are coincident upon this subject; and that the general principle is that the founder of the college—be he the king, an individual, or the state—is the one who first erects and endows it; and that all subsequent donors stand to it in the relation of benefactors. It matters not how great or how numerous may be their donations; they cannot dispossess the founder of his rights as such. He may transfer them to another; but he cannot rightfully be deprived of them; and if he does not part with them, they descend to his heirs or successors.

What, then, are the rights of the founder? If he places the property in the hands of trustees, he parts with none of his rights, but may recall the trust. But if he places it in the charge of a corporation, the right of control is then vested in the corporation; and nothing remains to the founder but the right of visitation; that is, a sort of judicial authority over the corporation to call the corporators to account for any perversion of the funds, or any divergence of the corporation from the aim originally given it. This great right of visitation exists of necessity. If the founder fails to provide for its exercise, then the law provides it for him. If Harvard, as some assert, was the founder of the college, and failed to provide for a visitor, or if the right was parted with or lost, then the general court is in full possession of it. But if the Commonwealth was the founder, then the State, having a self-perpetuating existence, retains the right forever unbroken.

Now, Mr. Chairman, what are the facts which history teaches on this subject?

At a session of the general court held in Boston in September, 1636, as the record says, "the court voted, for the erecting of a public school or college, at Cambridge, £400, to be paid out of the country treasury." It has been found convenient, in later times, to deny that this sum was ever paid; but the denial will avail nothing against the fact of the grant; and besides, the treasurer of the college, in a recent publication, places this grant of the general court of 1636 at the head of the list of donations to the college.

In 1637, Nathaniel Eaton was chosen professor of the school, and was charged with the management of the donations, or funds, or "college stock," as the properties of the college were designated in those times.

In the following year, 1638, the Rev. John Harvard, of Charlestown, died, and made by will a donation to the college of £779 in money, and 320 volumes of books. The general court, the same year, in gratitude for this princely benefac-

tion,—for such it was in those times, and in the then condition of the infant colony,—ordered that the name of Harvard should be given to the college. At that time, there was no corporation in existence. None was then created. It was emphatically the college of the general court. The court had established the rights of the Commonwealth as founder by making the first donation. It appointed the first officers. It directed where and how the college should be built. It took John Harvard's donation, and, to perpetuate his memory, it gave the college his name. But nowhere, and at no time, did it decree that he should be held as the founder of the college, or that his heirs or successors should have the ordinary visitatorial powers that attach to the founders of such institutions. On the contrary, four years afterwards, in 1642, the general court proceeded to establish—not a corporation—but a Board of Overseers, with power to manage the funds, and make all necessary laws for the government of the college; and, at the same time, accountable in all things to the general court.

Such was the character and condition of the college for the first fourteen years of its existence—from 1636 to 1650; and during those fourteen years there was no act of the government that declared Harvard the founder of the college, or even indicated an intention of the court to recognize in him, his heirs or successors, the well-established rights of the founder of such an institution. It is not to be supposed that there was any accidental omission to make such recognition; for the colonists, be it remembered, had but recently left the mother country, where the whole subject of college law was thoroughly understood, and in whose colleges many of them had been educated.

Harvard himself was a remarkable man. He was an educated clergyman, comparatively affluent, as money was then valued, and yet bestowing his wealth in the full confidence of one gifted with the power to anticipate the wants of the advancing generations of men, and to foresee the coming glories of the land on which he had scarcely pressed his foot before he went to sleep in its bosom. Yet nowhere, and at no time, did he express a desire to be considered as the founder of the college, or to reserve to his heirs or successors the ordinary visitatorial power incident to a founder.

He came up to the general court with no such petty interrogatory upon his lips as, "What security can you give me for my money?" No, Sir; he participated in the idea common to the colonists, that it was their mission to establish, upon the new continent, a new order of civilization, founded upon the Christian doctrine of the equality of all men, in the state as in the church. He recognized, in its full force, the democratic idea of popular sovereignty, and of the capacity of the people to make a perpetual demonstration of the Christian rule that the powers of government are in the people themselves, and not in the institutions of government which they themselves may organize. Acting upon this idea, he placed his munificent donation in the hands of the general court, with no injunction, but to TAKE IT—USE IT; in the concise and explicit language of Puritan legislation, "For the advancement and education of youth in all manner of good literature, arts, and sciences." He did not ask that a self-perpetuating corporation should be established, to watch over his donation; but he trusted to that strong sense of right that pervades the broad bosom of the people, in full assurance that his confidence would never be found misplaced. He no more distrusted the future than he distrusted the Ruler of the universe. He believed that the living ages, as they should advance in perpetual succession, would be just to the ages gone by; and, while he had faith in their integrity, he believed in their right to adapt their institutions to their existing condition.

I come now, Mr. Chairman, to the consideration of the second period in the existence of the college—that of its charter, in 1650. The general court then gave it form, substance, and existence, as a corporate body. Did the general court give it the character of a *close* corporation? or was there an essential reservation in the charter?

By the charter, the corporation was to consist of seven persons, with power to receive and manage the college funds; to fill vacancies caused in their body by death or resignation; to choose college officers or servants; and, generally, to make all necessary rules for the government and conduct of the college. But there was an important reservation in the charter. The counsel and consent of the board of overseers, as established in 1642, were required, to give force and effect to the acts of the corporation. That board is fully recognized, but was not established, by the charter. As its name implies, it was not an independent body, but stood around the college to oversee and guard the rights of the Commonwealth in the institution. Neither body alone was the government; and conjointly their powers were not full powers. The corporation, with the consent of the overseers, had the power to fill vacancies in its body, but it had not the power to create vacancies. It could, by the terms of the charter, choose its officers, and remove them; but it could not, by the charter, remove one of its fellows,

that power belonging to the founder in the exercise of his visitatorial or judicial authority over the college. The visitatorial right, as we have seen, was never in John Harvard, or in any of his heirs or successors. It was originally in the general court, as the founder; it was not transferred or surrendered by the court when it granted the charter, in 1650; it has never, as I believe, been transferred since that day; and being in the law-making branch of the government, in the outset, it has continued so through the successive generations of men that have held in their hands the legislative power of the Commonwealth during the two centuries that have passed; and must, of necessity, continue there through all time, unless specially and explicitly transferred by the people, or their authorized representatives.

The charter of the college was subsequently amended in 1657 and in 1672, but was in no way materially changed. Other changes were subsequently made, and with like effect.

In 1691, the provincial government was established by William and Mary, in place of the colonial government; and in 1707, the general court confirmed the college in all the rights it had by the charter of 1650. That confirmation was given in these words:—

"And inasmuch as the first foundation and establishment of that house, (Harvard College,) and the government thereof, had its original from an act of the general court, made and passed in the year 1650, which has not been repealed or nulled, the President and Fellows of the said college are directed, from time to time, to regulate themselves according to the rules of the constitution by the said act prescribed, and to exercise the powers and authority thereby granted for the government of that house, and the support thereof."

Four charters were sent to England, but were disallowed by the crown, because the general court would not surrender its control of the college to the royal authority. This was after the colonial charter had been recalled by the crown.

By the charter of 1650, thus revived and confirmed by the general court in 1707, the college was made not an absolute but a qualified corporation. The president and fellows had not then, and have never had, any vested rights which were distinctively their own. All their rights are rights of trust; and those rights were placed in their hands originally by the general court, as the founder of the college, with the explicit provision that they should hold and manage, for specific purposes, the properties given to the college by the founder, and by its long and brilliant array of benefactors, in successive generations, from Harvard to Bussey, and Lawrence, and Phillips.

I have said that it was not an absolute corporation. The act of 1642 established the board of overseers as the representatives of the general court. In the college charter granted in 1650, the power of the corporation is qualified by an explicit recognition of the board of overseers, in these words:—

"And the said seven persons, or the greater number of them, *procuring the presence of the Overseers* of the college, and *by their counsel and consent* shall have power, and are hereby authorized, at any time or times, to elect a new President, Fellows, or Treasurer, so often, and from time to time, as any of the said persons shall die, or be removed," &c.

Through the whole original charter, and in its subsequent modifications—none of which were material—the counsel and consent of the overseers were made essential to render valid the acts of the corporation, with the single exception of receiving and investing of funds, or dealing in real estate for the use and benefit of the college.

The power of the overseers was not a mere advisory power. Their *consent* was necessary to most of the acts of the corporation. They had the power to render null the elections and appointments of the corporation. They and the corporation had the power to dismiss the officers and servants of the college; but the two boards, neither separately nor conjointly, had the power to dismiss a member of the corporation. That power was in the general court, as the visitor on in its foundation; it was exercised by the court, and has never been given up; and cannot be given up unless the present generation or future generations shall be false to the great trusts confided to them by the founders of the Commonwealth.

Whatever power the Commonwealth had over the college by the charter granted in 1650, it has fully and completely at this day. It is true that in the transitions of political power, consequent upon the English Revolution of 1688, the result of which, so far as this Commonwealth was concerned, was the substitution of the provincial for the colonial government—it is true, that the government was unable, at times, to exercise its rights, through the overseers; but at no time did it lose those rights; and to whatever extent it might have been stayed in the execution of them, they were fully revived and confirmed when the crown tacitly gave its assent to the act of the general court, in 1707, which reaffirmed, in all its original force and effect, the college charter of 1650.

Now, if John Harvard was the founder of

the college, by his own will, or was made founder by the act of the general court,—as I understand the college at this time maintains,—then the general court, from that time, had no visitatorial power in the premises; and, of course, it could exercise no such power. But what was the fact? By no charter, act, resolve, or decree of the general court, did the court expressly, or impliedly, transfer, surrender, or part with its original visitatorial or judicial power over the college. In compliment to its first private benefactor, it gave the college the name of Harvard; and that was all it gave. On the contrary, the court went on in the execution of its duty as founder and visitor of the college, the same as it would have done if no such man as Harvard had ever existed, or no such fund had ever been given to the college. Contemporaneous construction shows the character of the charter.

The college charter, let it be borne in mind, was granted in 1650. In 1654—four years only after the establishment of the corporation—its first president, the learned and pious Henry Dunster, resigned his place as president of the college and of the corporation. To whom did he resign? Not to the corporation, or the overseers, who had the power to fill the vacancy, but to the general court, in a letter addressed, in his own language: "To the worshippful and honored Richard Bellingham, Esq., Governor of the Massachusetts Colony, with the rest of the honored Assistants and Deputies in the General Court at Boston, now assembled."

In the conclusion of his letter, he says:—"Therefore I here *resign* up the place wherein hitherto I have labored with all my heart, (blessed be the Lord who gave it,) SERVING YOU AND YOURS. And henceforth, (that you in the interim may be provided,) I shall be willing to do the best I can for some weeks or months to continue the work, acting according to the orders prescribed to us," &c.

Upon receiving Dunster's resignation, June 10th, 1654, the general court passed this order:—

"In answer to a writing presented to this Court by Mr. Henry Dunster, wherein among other things he is pleased to make a resignation of his place as president, this Court doth order: That it *shall be* LEFT to the care and discretion of the overseers of the college to make provision, in case he persists in his resolution more than one month, and inform the overseers, for some meet person to carry an end that work for the present, and also to act in whatever *necessity* shall call for *until* the next sessions of this court, when we shall be better enabled to *settle* what will be needful in *all* respects with reference to the college. And that the overseers will be pleased to make return *to this court*, at that time, of what they shall do herein. The Deputies have passed this, and desire our honored Magistrates' consent thereto.

1654. WILLIAM TORREY, *Clerk.*

Consented hereunto by the Magistrates,—

RICHARD BELLINGHAM, *Governor.*"

In this matter, the overseers did not act from any rights of their own, but under powers expressly delegated to them by the general court; and for their exercise they were required to make a return to the court. This resignation of Dunster's implied something more than a voluntary retiring from the college. He had fallen under censure for some heretical notions on the subject of baptism; and therefore the overseers, acting for the court, said to him, that "unless he would give satisfaction, according to the rules of Christ, they must be constrained to furnish the college with another president." That, is he must be *dismissed* from the presidency, and another appointed in his place.

In the same year in which Dunster resigned the presidency of the college into the hands of the court—four years after the charter was granted—the general court exercised, in a remarkable manner, its visitatorial power over the college. The records say that the court, "on perusal of the return of the committee appointed to consider of the college business, order that the stock appertaining to the college should be committed to the care and trust of the overseers of said college."

By the law of 1642, the funds were placed in the hands of the overseers; by the charter, they were taken from the overseers and confided to the corporation; and then, four years afterwards, as I have shown, the corporation was dispossessed of the funds, which were again placed in the keeping of the overseers. A member of the corporation, writing upon this transaction, nearly a century afterward, said:—

"At first view this may seem an extraordinary act in the court, who, by a solemn grant in the charter of '50, had vested the property of that stock in the said corporation. But there is really nothing extraordinary in this act; for, as visitors of their own college, the court had the right at all times, to see that this stock was well taken care of." "This was an act that, in common law, the visitors of a college had a right to do."

Twenty years afterwards, in 1674, the general court again exercised its visitatorial right over the college. The president, the corporation, the overseers, and the students, were summoned before the court; and, after an examination into the condition of the college, the court voted:—

"That if the college be found in the same languishing condition at the next session, the presi-

dent is concluded to be dismissed without farther hearing."

In 1693, Increase Mather was president of the college. He was a man of ability and learning, but exceedingly ambitious to figure in politics, as well as in religion and literature. He not only chose to retain his place as pastor of the North Church in Boston, but he even left both his church and the college, to go on a political mission to England. In view of his course, the general court voted, that "the president of Harvard College, for the time being, shall reside there, as hath been the custom in times past;" and five years afterwards the court found it necessary to declare again, that "the president should reside at Cambridge." But president Mather, still disregarding the wishes of the government, the general court, in 1701, dismissed him from the presidency, and placed the college in the charge of vice-president Willard; and in 1707, Willard having deceased, John Leverett was chosen to fill the place, and the general court, accepting and approving of the appointment, voted to pay him a salary of £150 from the public treasury, "for his encouragement and support during his continuance in said office, he residing at Cambridge, and discharging the proper duties to a president belonging, and entirely devote himself to that service."

In 1742, Nathan Prince, who had been a member of the corporation for fourteen years, was dismissed by a vote of the Board of Overseers. He was a vigorous and earnest writer, and although guilty of some dereliction in those rigorous times, he was not disqualified to bear witness to future times against an act of usurpation on the part of the overseers. In his appeal to the public, he said :—

"The next, and the only other dismission of a member of said corporation, was on February last, 1741–2; without any power from the court, or any act of said corporation for the same, but by the sole and sovereign authority of the overseers of the college; who, having no plain law for it, nor from times immemorial any instance of such a thing on their side, seemed now resolved to make one, that so they might plead in future times. Precedents against law are dangerous things; especially if they rise so high as to turn out members of corporations. Such a thing done in England would cause an insurrection; and if this power does not belong to the corporation and overseers of said college by law, the overseers of said college, by such an act, have assumed to themselves *the powers of the general court*, viz.: those powers, which in President Dunster's case were not the powers of the overseers, *but were delegated to them from the court, and so were the powers of that court.* Nothing, therefore, can demand a more critical examination than such precedents; and that at their first beginning, before they acquire the force of laws, and in future times will be pleaded *as law, against the rights of the general court itself.*"

The whole drift of Prince's appeal, was to the effect that the power of removing a fellow of the corporation, was not given by the charter to the college government, but, in his own words, "that the court had reserved it to themselves;" thus bearing his own testimony, in the most emphatic manner, to the visitatorial right and power of the general court as the founder of the college.

The general court, in all the times of the colony and province, showed its zeal in maintaining the foundation it had established, by paying, for a long period of time, the salary of the president of the college out of the country treasury; by numerous payments to professors in the college; by grants of land; and by donations of £1,500 in 1718, for the erection of Massachusetts Hall; of £1,000 in 1726, for the president's house; of £2,500 in 1762, for Hollis Hall; and of £4,100 in 1764, 1765, and 1766, for rebuilding Harvard Hall; amounting in the aggregate, down to 1786, as stated by the treasurer of the college, to over $91,000. And he says that in those early days money had a value six or seven times greater than its value in later times.

But the Commonwealth's bounty to the college did not stop with grants of money. In 1640, it gave the college the ferry across Charles river. How much income it afforded, I have not the means of knowing. But in 1785, after the charter of the Charles River Bridge Company, the general court provided for an annual payment of £200 a year by that company for the benefit of the college; and subsequently, for £100 a year each, from two other bridges across the same stream.

In the consideration of this subject, Mr. Chairman, I come now to the third period in the existence of the college; and that is under the Constitution of the Commonwealth, as established in 1780, and revised by the Convention of 1820.

The college had existed *in name*, though not *in law*, as a college, from 1636 to the time of its charter in 1650. It then became both in law and in fact a college. The board of overseers, as I have already said, was recognized by the charter, and made a component part of the government. An appendix to the charter was given in 1657. Another modification was made in 1672; and the whole was confirmed by the general court in 1707.

These were all the laws that were in force touching the college, when the Convention of 1780 assembled. Such was the understanding of

that body, and such is the voice of history upon the subject.

In forming the Constitution, the Convention proceeded to secure the rights of the corporation, and the rights of the people as the founder, so that they should be transmitted unimpaired, to future times. The result of its action was the fifth chapter of the Constitution, which was approved and adopted by the people.

The chapter is divided into three sections. The first declares:—

"That the president and fellows of Harvard College, in their corporate capacity, 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, and to their successors, and to their officers and servants respectively forever."

The second section confirms to the college all the gifts, grants, devises, legacies, and conveyances, made to the college, to be held and used in conformity to the will of the donors.

The third section provides for the perpetuity of the board of overseers, closing with this proviso:

"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."

This proviso refers not to the corporation alone, or the overseers alone, for neither of them in their separate capacity constitutes the government of the college. The form of expression is such that it must embrace both boards, or it would be without sense and meaning. Of course, under the constitution, the legislature of to-day has the same powers of legislation which were had by the general court previous to 1780; and what that power was we have seen in the whole history of legislation during the times of the colony and the province. The court claimed and exercised its rights of visitation, as founder, in as full and perfect a manner as it would be possible for it to claim and exercise any right pertaining to the functions of government. To deny this, is to deny the whole history of the Commonwealth. It is to deny that the college was built, located, and named by the general court. It is to deny that the court watched over it by day and guarded it by night, and sustained it as a parent sustains a child, in all its trials and perils, from its infancy, when Cambridge itself was but a wilderness, up to its strong and vigorous manhood. Without this visitatorial guardianship of the Commonwealth over the college, its light would have gone out, its funds would have been dissipated, its charter would have been a dead letter, and the donations of Harvard, and other generous benefactors, would have been lost forever; and there would have been no broad foundation on which to pile up the splendid legacies of later days.

With all deference, Mr. Chairman, to the opinions of gentlemen learned in the law, I am unable to believe that this is a case beyond the reach of ordinary comprehension; or that it is involved in intricacies and mysteries which common sense cannot fathom. The corporation itself, in its memorial two years ago, told the legislature that:—

"There is no doubt that the founder of a charity has the right in its creation to prescribe the terms and tenure upon which it shall be held, and the statutes by which it shall be governed, and to reserve the power of altering them from time to time; as also general legislative and judicial authority over the trustees, with power of removal and substitution; provided that such terms, tenure, and reservations, be not repugnant to the general law. Nor can it be doubted that, if the grant be general in its terms, for the purposes of the charity, without prescribing any terms upon which it shall be held and managed, *such general legislative and judicial power will remain in the founder, to be exercised at his pleasure;* nor that, if the whole tenure and government are not granted to the trustees or other persons, *the portion not thus parted with will remain in him.* And any power thus expressly or tacitly reserved in the founder, is called visitatorial, and may remain in him, or be at any time granted to other persons; and it constitutes a valuable estate or property, recognized as such in courts of law and equity."

This opinion is signed by the chief justice of our supreme court, and by one of the judges of the United States court, and may, therefore, be taken as sound law in the case. This doctrine is not inconsistent with that of Mr. Justice Holt, that if the founder of an institution fails to provide a visitor, the law provides one for him.

But if I understand the memorial, it avoids the conclusion, by the assertion that Harvard College is a close corporation; and that its franchise is a vested right in the Fellows, which the legislature cannot touch.

If that be so—if John Harvard was the founder of the college, and the right of visitation was in him, his heirs, and successors—then Harvard College can be brought into the same category with Dartmouth College; and the law of the United

States court will apply in the one case as well as in the other. But I find no analogy between them.

Dr. Wheelock was the founder of Dartmouth College, and retained for himself, his heirs, and successors, a visitatorial right over the foundation. The legislature of New Hampshire intervened, and changed the organization of the corporation. The trustees appealed to the United States court for redress, under that provision of the United States Constitution which declares that "no State shall pass any law impairing the obligation of contracts." The court sustained the appeal, and the legislature was defeated. But whether a contract was or was not involved in that case, is a question I leave to the logic of the legal profession; as also those other questions, whether the same doctrines were upheld by that court, and if so, how far, in the more recent case of the Warren Bridge; and also whether, as the supreme court of the United States has been constituted of late years, it is probable that the same doctrines would now be laid down as law which ruled in the decision of the Dartmouth case.

In the Convention of 1820, Mr. Webster admitted, in his report, that the college was founded by the Commonwealth. His opinion will, of course, have great weight with a portion, at least, of this Convention. If he was correct in his opinion, then the Commonwealth has a perfect right to modify the organization of the college, whenever the exigencies of the case may require it. Should it do so, upon the theory admitted by Mr. Webster, then there will be no impairing of the obligations of a contract that would make a case that could stand for a moment in the United States court. The exigencies of the case must rule the decision. The court will admit the full rights of the Commonwealth as visitor upon its own foundation; unless, of which I should entertain no serious apprehension, it should throw over the case one of those constructive interpretations of power in the general government, which tend to rob the States of their sovereignty, concentrate all power in the general government, and subvert the liberties of the people.

If the Commonwealth has all the rights and powers of founder of the college, and there exists an exigency, then the corporation is in the power of the general court, acting under such constitutional provisions as the people may prescribe; and there is, and can be, no contract that can be impaired by the action of the people through a Convention, or the general court. In good faith to our forefathers who established the college, and watched over it in its early perils, and fully recognized it in the Constitution—and especially in good faith to its early and its later benefactors, who have enriched it with a princely munificence—we are under the most sacred of obligations to see that its funds are not perverted from the purposes to which they were dedicated. If a perversion is proved—or a failure to give them their full force and effect—then the exigency is made out; as it was in the case of Dunster in 1654, and in the case of the summons to the college to appear before the general court in 1674. In such a case, the plea of a contract cannot avail against the Commonwealth.

But in supposed cases of conflict between the general government and the government of a State, it is important to bear in mind the relative powers of each to the other—the theory of civil government among us, and the mode in which power is distributed by our institutions.

The general government is an organization of delegated power. It has no original sovereignty. It is a creature of the States, which created it by contributions from their own sovereignty, powers and rights. It can act upon such powers only as were expressly delegated to it by the States; and the powers which it may exercise are plainly and specifically defined and set forth in its constitution, as well as the powers which it is forbidden to exercise. With the single exception of the powers thus delegated, every State is sovereign of itself, up to the full measure of its reserved powers, rights and privileges; and can be held accountable in no manner to the general government, except for an invasion of the powers it expressly delegated to that government when it became a party to the compact between the States of the Union. When, therefore, there is no collision between a State and the general government, and no question in dispute in the nature of a contract to be impaired, the Commonwealth cannot be called to account in the courts of the United States for any exercise of its reserved sovereignty and power in or upon its own institutions. Upon these premises, it is my full belief that the general government, acting within the limits of its delegated sovereignty, and without the line of the reserved rights of the States, has no more right to touch the Commonwealth for its action upon Harvard College, than it has for its action upon the State Lunatic Hospital, or the State Reform School. Both of those institutions are corporations, substantially of the same nature as the corporation of Harvard College admitted itself to be, from the period of its organization down to about the commencement of the present century.

The provision that "no State shall pass any law impairing the obligation of contracts," was originally a compact of amity between the sev-

eral States, to protect the rights of the citizens of one State from destruction or invasion by the government of another State.

By the resolution upon your table, Mr. Chairman, it is proposed to affirm in the Constitution the full power of the legislature over Harvard College, as a State institution; subject, however, to such restrictions as shall forever protect the college in all its legal rights. It is a simple proposition, and needs no labored exposition. It gives to the legislature all the power which the people have over the college. It places it in the Constitution as an *express* power, where it now exists in the nature of an *implied* or *inferential* power; the extent of which has always to be determined by judicial interpretation. The language of the resolution is almost identical with the charters of the other two colleges in the Commonwealth. The charter of Williams College was granted in 1793; and in it the general court expressly provided, in these words:—

"That the legislature may grant any farther powers to, or alter, limit, annul, or restrain, any of the powers vested by this act in the said corporation, as shall be judged necessary to promote the best interests of the said college."

This charter was given thirteen years after the adoption of the Constitution of 1780; and, (as suggested by a member of the committee,) was in all probability an exposition of the view which was then entertained of the powers of the general court, affirmed by the Constitution, as existing under the Province Charter.

Thirty-two years afterwards, in 1825, the legislature chartered Amherst College, and placed in its act of incorporation a transcript of the provision contained in the charter of Williams College; with the farther provision, however, that the legislature should forever elect a portion of the trustees of the college. And that is now done.

One other point, Mr. Chairman, remains to be briefly considered, and that is whether there exists a necessity for the Commonwealth to intervene, in the exercise of its visitatorial rights and powers, to correct abuses in the organization and operations of the college; or to give to the institution greater force and effect.

In the matter of the funds of the college, I make no charges against the corporation. I have none to make. If any are to be made, they must come from some other source. I know nothing of its funds—how they have been invested and applied—except in common with the whole community. I never entered the doors of the college, and know nothing of its internal order and life. Its own reports, and the records of the general court, show that it has been endowed with a profusion that is almost prodigal. And what is the result? A less number of students than is found in some colleges more recently established, and charges for education that are onerous to many who avail themselves of its benefits.

These facts have led to the inquiry whether the college has, or has not, failed to meet the just expectations of the people. Those expectations were expressed in the charter. They were —not that it should be a select school for the education of classes or cliques in particular theories, principles, or tenets, religious or secular— but, in the concise language of the charter, "for the advancement and education of youth in all manner of good literature, arts, and sciences."

What, then, Mr. Chairman, is the relation which the college now holds to the Commonwealth?

Its corporation is now, and long has been, composed of men who are understood to be of one sect in religion, and of one party in politics. That religious sect does not embrace more than one-tenth of the people of the Commonwealth. I do not charge, Sir, that in some of its acts the corporation has shown a culpable insensibility to public opinion; but I do say, that while the college remains in the hands of a sect or a party, it is outside, over and beyond, the reach of the sympathies, the approval, the coöperation of the mass of the people.

Its founders and benefactors never designed that it should be a sectarian, a narrow, or an exclusive institution. They, of course, had their peculiar notions in theology and in government; but they nowhere incorporated them into the constitution of the college, or made provision that they should rule in its administration.

For one, Mr. Chairman, I propose to make no changes in the original character and purposes of the college. All I propose, is to bring back the college upon its first foundation; to give greater activity and effect to those means of education that have been so liberally supplied by the Commonwealth, and by the largesses of its long line of private benefactors; and, by future constitutional legislation, to place the college in full contact with the beating pulse of the great heart of the Commonwealth, that the generous sympathies of the whole people may cluster around it in the present and in all coming time. Ours is a powerful Commonwealth. Its amplitude of means is daily augmenting. The platform of the college is a broad one. Without impairing the efficiency of the institution that now occupies but one of its corners, the Commonwealth can rear

upon it an organization such as the progress of society may demand.

Of course, Mr. Chairman, I have no sympathy with those who cherish errors and abuses because they are old; and dread the progress of truth because its revelations are new; who regard every change as innovation; and who hope that the future may be as the present is, or as the past has been. The Committee with whom I have had the honor to act in reporting this resolution, do not even contemplate a subversion of the established order of the college, or a change of its studies or discipline. If there are duties unperformed, all will agree that they should no longer be neglected. If there are drones in the hive, they should be set to work, or driven out. But these are the appropriate duties of an energetic administration of the college, that comprehends its duty, and has the moral courage to do it.

Harvard College has the means—and what it has not it can have—to place it beyond the reach of competition from all other American Colleges. Popularized as it should be, and in a land that is progressing with giant strides, it should have its thousands of students where it now has its hundreds. It should be a great centre of good influences—the prolific fountain, from which "all manner of good literature, arts, and sciences" should flow out in abundant streams, to enlarge, to invigorate, to refine, the public mind. It should be the head of our system of public instruction:—not standing aside, in narrow exclusiveness, to furnish a few individuals for the professions:—but educating men, of all classes, for a higher aim in all the pursuits and avocations of life—especially that great body of public teachers who are hereafter to give tone and direction to the ideas and sentiments of the people.

With these views, thus imperfectly presented, and with the hope that my colleagues of the Committee will supply my deficiences, I ask pardon, Mr. Chairman, for the extent to which I have trespassed upon your forbearance.

Mr. BRAMAN, of Danvers. Being a member of the Committee which made this Report, I ask the indulgence of the Convention for a short time, in order that I may have an opportunity of expressing my views. With some of the views which have just been expressed by the chairman of that Committee, I entirely concur; but from others of them I as entirely dissent, although, without doubt, those views are conscientiously and honestly entertained.

I should have preferred to have stricken out of the Constitution all that related to Harvard College; and failing in that, as the next best thing, I would have chosen to have retained the provision as it is in our present Constitution, without alteration or addition.

I have some objection to the present Report. The principal objection I have to it is, that it leaves the relation between the government and the college precisely where it was. It neither confers an additional power on the legislature, nor does it compel them to do anything which they had no power to do, without such a provision. I do not think it wise to make any change in the Constitution, without something is to be effected—without some new power is granted to the legislature, which it did not possess before.

Another objection which I have is, that it rather invites the legislature to do what I believe it has no power to do; and if it should undertake to exercise such power, it would be in contravention of the Constitution of the United States. The contract to which allusion has been made, is a contract which comes within the meaning of the article of the Constitution of the United States, which provides that no State shall pass any law impairing the obligations of contracts, and they probably would refer to the celebrated Dartmouth College case as an authority. In 1769, the crown of England created a corporation consisting of twelve of the corporators of Dartmouth College, by which the whole management of that institution was intrusted. The college continued to flourish under this charter, fulfilling the benevolent intentions of its founder and benefactors, till in 1816, the legislature of New Hampshire—thinking, as many do now, with respect to the corporation of Harvard College, that the institution could be rendered more extensively useful, by putting it immediately under the control of the State—proceeded to provide that there should be two new boards created. Nine trustees were added to the original twelve. There was also a board of overseers, consisting of twenty-five, having a negative upon the acts of the corporation; and the members of both of these boards are made elective by the governor and council. The corporation of Dartmouth College resisted the act. They contended that it was an invasion of their chartered rights, and that it was an indirect contravention, both of the Constitutions of New Hampshire, and of the United States. They took the case into the courts of New Hampshire, and then, after the decision of the courts of that State went against them, they appealed to the United States court, and, after an argument, conducted by some of the most eminent legal men of the country, and after an investigation by the court, adorned by the names of a Marshall, and a Story, the decision of the New Hampshire court was overruled,

and the corporation was restored to its original condition and privileges.

Now, I maintain, that the charter of Harvard College is as strong as the charter of Dartmouth College, in its main features; and having read them both, and carefully compared them together, I put it to any legal gentleman, whether there is any such difference between the corporation of Dartmouth College, and that of Harvard College in 1650, as does not place them both alike under the Constitution of the United States.

Views have been advanced by the chairman of the Committee, and they are advanced also by other individuals, going to show, that the corporation of Harvard College stands on a different footing from that of Dartmouth College, and that it is not within the protection of the Constitution of the United States. I am aware that there are some persons who think that this Convention can exercise a control over this college, which cannot be exercised by the legislature of the Commonwealth; but, Sir, there is no foundation for this idea. The Constitution of the United States has just as much power in a State, acting through a Convention, as it has acting through a legislature, and if any act should be passed by this Convention, if anything should be incorporated into that instrument which is in contravention of the United States Constitution, it would be just as quickly overruled as it would if it had been done merely by State authority. I know that there are individuals who say that the corporation of Harvard College is a State institution, and they therefore maintain that it is under the control of the State. Now, the phrase "State institution" is a very indefinite phrase—too indefinite to be made the foundation of an argument, without it is more precisely defined. What then is meant by calling it a State institution? Does it mean that the State gave it its charter of incorporation? Some acts of incorporation are contracts, and are, therefore, exempted from all legislative interference. They are not under the control of the State, and are beyond all interference on the part of the government of the State. It must be determined that the corporation is without the control of the Constitution of the United States, before it can be assumed that it can be interfered with. The question, therefore, depends upon the nature and the objects of the corporation that is created. The act of incorporation determines nothing, one way or the other; and if the act of incorporation of Harvard College of 1650, was a contract within the meaning of the Constitution of the United States, then, of course, it is protected by that instrument, and is not otherwise under the power and control of the State, than as its members are subject to the laws which apply to all other parts of the community.

The question then arises, whether a power can be deduced on the part of the State in relation to this institution, in consequence of its being a benefactor to the State.

It has, doubtless, conferred many peculiar benefactions upon the government, but it would have been impossible for the college to have proceeded, without the assistance of the State. But, was it ever known that the conferring of a gift carried with it the power of control over the person or body to whom it was made? When was such a thing ever known? If the State has conferred a gift upon the college, it carries with it no control, except so far as the power is deduced from the assumed fact that the State is the founder of the college. The learned chairman of the Committee, (Mr. Knowlton,) maintained that the State was the founder. This assertion has been disputed, and I think it remains doubtful to this day, whether the appropriation which the State made to the college was ever applied to the uses for which it was made, before the donation of John Harvard was applied to set the college in operation.

Mr. BOUTWELL, for Berlin. I wish to ask the gentleman whether the existing Constitution of the State does not declare that our ancestors founded Harvard College in 1636, and whether at the Convention of 1779, the corporation and board of overseers did not both assent to the insertion of that declaration into the Constitution of the State.

Mr. BRAMAN. The words "our ancestors," may refer to the State, or they may not. But I will waive the point whether the State founded the college or not, because the mere fact that a person, or state, or government, founded an institution, does not necessarily imply that it has the control of it. The doctrine of the common law upon the subject, is this: that the founder retains the right of visitation over the institution as long as he chooses to do so, but he has the right to part with it at any time. He retains the power as long as he lives, and then, I believe, it descends to his heirs, unless he otherwise makes provision for its disposal. But, I say, he has the power to devolve it upon any other body, and when he has disposed of it, whether to an individual, to a state, or to a board of trustees, the whole power is gone from the founder. Mr. Wheelock founded the institution of Dartmouth College, and, as such, had the right of visitation and control. But he chose to part with the power and privilege, and the moment he did that, he had no more authority to meddle with the institution, than the Emperor of China has. And, I maintain, that the State can

just as well part with its power over a corporation as an individual can. Cannot the State sell, or convey away property, by gift? Cannot she also dispose of her corporate franchises? I believe this doctrine is maintained by all the writers upon common law. So the fact, if admitted, that the State founded Harvard College, does not give it any right of control over the corporation, provided it has parted with its power. And I maintain that it parted with all its power when it gave the charter of 1650. If that act does not convey complete control to that body over the college, then there are no terms which can convey control; and if it is not a contract within the meaning of the Constitution of the United States, it is not in the power of language to frame a contract.

But, it is said, that the Constitution of 1780 gave to the State all the power over the college which might have been exercised by the provincial government. That Constitution says:—

"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."

Now, I think, by a fair construction, that the language refers only to the board of overseers. But, suppose it extends to the corporation also; then the question is, what was the power which the provincial government might have exercised over the college? for it is necessary to determine the amount of the one, in order to ascertain the other.

I ask, first, what power did the provincial government exercise? It never exercised any. From the first moment that the charter was granted, up to its reëstablishment in 1707, there was no act of interference by the legislature, until the Revolution which severed this country from Great Britain. The college went on during that time, and acted according to the powers conferred upon it by the charter, and as independent of the government as though the government had not existed.

But I ask, secondly, was it a power which the government attempted to exercise, by one or more of its departments. It was attempted to be exercised, but the attempt failed. In 1722, I believe, two members of the academic faculty applied for seats in the corporation. The corporation rested their defence upon the charter, and maintained that that instrument confined the membership of the corporation to residents of the college. This measure originated not merely from a desire of the petitioners to obtain seats upon the board, as a desire to remove some obnoxious members from the corporation. This board resisted, and, at length, an appeal was taken to the general court, and the legislature passed resolves favorable to the views of the petitioners. They were concurred in by the council, but were negatived by the governor.

It is maintained, by some, that this attempt on the part of the provincial government, shows the views they entertained, respecting the liability of the corporation to their control, and determines that the government entertained opinions in favor of its powers over that body, which, though rightly possessed, failed to be carried into accomplishment from motives of expediency.

But, let me ask, what was the nature of this power, attempted to be exercised over Harvard College? It was, to all intents and purposes, a judicial power. It undertook to fix the construction of the charter. It undertook to interpret the law, and that law a contract, and to depose some individuals of their franchises, and to admit others in their places.

Now, it belongs to courts of law, and not to the legislature, to exercise judicial powers. I am aware that there are cases where laws are ambiguous and of doubtful construction, and a legislature sometimes passes other laws to remove that ambiguity and doubt; but such laws are, to all intents and purposes, new laws, and not an attempt to ascertain the intention of previous legislatures.

Now, if this was a judicial exercise of power, it does not belong to our legislature, because the Constitution of the Commonwealth expressly makes a distinction between the powers of the legislature and the powers of the judiciary, and says that the one shall not exercise the functions of the other. Of course, therefore, as it was a judicial act, it does not belong to our legislature or to any other.

Let me also ask, whether it was a power which might be rightly exercised, according to the views of morality, for doubtless it refers to such a power as this, if it refers to any power at all. And what is this power? It has no right to annul the charter of any corporation, or to impair it to any extent whatsoever.

"When," declares Judge Story, "a private eleemosynary corporation is thus created by the charter of the crown, it is subject to no other control on the part of the crown, than what is expressly or implicitly reserved by the charter itself. Unless a power be reserved for this purpose, the crown cannot, in virtue of its preroga-

tive, without the consent of the corportion, alter or amend the charter, or divest the corporation of any of its franchises, or add to, or diminish the number of trustees, or remove any of the members, or change, or control the administration of the charter, or compel the corporation to receive a new charter."

I believe Judge Story says, in another place, that the idea that a state cannot interfere with the charter of a corporation, is one of the most stubborn doctrines of the common law.

This was the contemporaneous construction, in 1650, when the charter was given, and again, in 1707, when the charter was reëstablished: that a power which gave a charter could not resume it, and could not impair any of its first rights whatsoever.

I am not forgetful of the fact that the parliament of England possesses an omnipotent power; that it has the power of annulling corporate rights, and of violating contracts. It is so, because there is no authority to restrain the exercise of such power, if it chooses to exercise it. It might annul the charters of both Cambridge and Oxford tomorrow, if it saw fit to do so. But it will probably not exercise such power, because it would create a sensation which would endanger the stability of the government.

But while it is admitted that parliament possesses that power, it is also firmly maintained that it is has no moral right to exercise it. Should it proceed to violate a charter, it would be considered as an exercise of tyrannical power, and a flagrant outrage upon all principles of morality.

In 1783, an attempt was made by parliament to alter the charter of the East India Company. But it met with strenuous opposition, and failed. It was styled, in the petition of the city of London, not only a high and dangerous violation of the charter of the Company, but a total subversion of all the principles of the law and constitution of the country. It was called, by Lord Thurlow, *a rash, atrocious violation of private property, which cut every Englishman to the bone.* And this was said, be it remembered, at a time when it was admitted that parliament had omnipotent power.

Mr. KNOWLTON, of Worcester. I would ask the gentleman whether the English law places the East India Company upon the same basis as that of literary and charitable institutions; and whether there does not exist a distinct right as to such institutions, which is not recognized by the law of England in regard to business corporations?

Mr. BRAMAN. I think there is a distinction, but it is all in favor of private corporations. They have much less power over such corporations, than they have over the East India Company.

Now, the provincial government might possibly have possessed and exercised the same power, within its sphere, that parliament had. It will be recollected that the colonial government maintained that it had, within its own sphere, powers as transcendent as the parliament of England had within its sphere. But suppose that it had this power, it had no more right to exercise it than the omnipotent parliament had.

It is a power which does not belong to our legislature, and which is against all authority, all right, and all justice.

But I have another argument upon this subject. The Constitution of 1780 confirmed to Harvard College its privileges and franchises. It is declared—

"That the President and Fellows of Harvard College, in their corporate capacity, and their successors in that capacity, 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, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever."

It confirmed all their liberties and all their franchises. Now, what is a franchise? Blackstone defines it thus:—

"It is likewise a franchise for a number of persons to be incorporated and subsist as a body politic; with a power to maintain perpetual succession, and do other corporate acts; and each individual member of such corporation is also said to have a franchise or freedom."

It seems, then, that when the Constitution confirmed these liberties and franchises of Harvard College, it confirmed franchises which it is not in the power of a legislative body to take away. And it was intended as a protection of the college against any such interference. Would it have been wise and consistent for them, after having thrown this shield around the college, to have put another paragraph into the Constitution which should proceed to surrender up the corporation to the mercy of the legislature.

[Here the chairman's hammer fell, the half hour allotted to each member to speak, having expired.]

Mr. HOOPER, of Fall River, moved that the Committee rise, report progress, and ask leave to sit again, with the view to a temporary suspension

of the operation of the order adopted this morning, limiting speeches to half an hour.

The motion was, upon a division—ayes, 106; noes, 86—agreed to, and

The Committee accordingly rose, and the President having resumed the chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported progress, and leave was granted to the Committee to sit again.

Mr. ALLEN, of Worcester, moved a suspension of the rule limiting speeches to half an hour, for this day.

Mr. BUTLER, of Lowell, moved to amend the motion of the gentleman from Worcester, so as to suspend the operation of the rule altogether.

Let us, said Mr. Butler, either have the rule enforced, or let us abrogate it.

Mr. HOOPER. My object in moving that the Committee rise, was, that the rule might be so far suspended, as to give to gentlemen on each side of the question, an equal chance of being heard.

The PRESIDENT. By the rules of the Convention, the question on suspending the operation of the order, is not debatable.

Mr. WESTON, of Duxbury, moved that the question on the motion of the gentleman from Worcester, be taken by yeas and nays. The motion did not prevail, and the yeas and nays were not ordered.

Mr. HOOPER moved to amend the motion of the gentleman from Worcester, so far as to give to the gentleman who was last in possession of the floor in Committee of the Whole, the same length of time to reply, as was allowed to the chairman of the committee on Harvard College, who preceded him, to address the Committee.

Mr. ALLEN accepted the amendment, as a modification of his motion.

Mr. BUTLER. Is the motion debatable?

The PRESIDENT. It is not debatable.

Mr. BUTLER. Then I move a reconsideration of the vote by which the order limiting the duration of speeches, was adopted.

The PRESIDENT. The question is on suspending the rule for a limited time.

Mr. SCHOULER. Does the Chair decide, that the order adopted this morning is one of the rules of this body, requiring a vote of two-thirds for its suspension?

The PRESIDENT. It is a standing order, and will require a vote of two-thirds for its suspension.

Mr. RANTOUL, of Beverly. It seems to me, Sir, that this is a very simple matter, that it is but a matter of simple justice, to allow the gentleman representing the minority of the Committee, the same opportunity to explain the views of the minority, that was accorded to the gentleman who represents the majority of the Committee, to explain the views of the majority. I hope, therefore, the rule will be suspended, so far as to allow the gentleman from Danvers an opportunity to conclude his remarks.

The PRESIDENT. The proposition, as modified, is that the order adopted this morning be so far suspended, that the gentleman who last addressed the Committee of the Whole, be permitted to conclude his remarks.

The motion, as modified, was agreed to.

On motion of Mr. BRIGGS, of Pittsfield, the Convention again resolved into

COMMITTEE OF THE WHOLE,

Mr. Sumner, for Marshfield, in the chair, and resumed the consideration of the Report of the Committee on the subject of

*Harvard College.*

Mr. BRAMAN. I am very sorry to have been the occasion of so much inconvenience on the part of the Convention; I began to wish I had continued to preserve the silence which I had hitherto preserved in the Convention, for I perceive that I am likely to acquire a good deal more notoriety than fame.

When I was cut off in my remarks by the falling of the hammer, I was proceeding to controvert the remark, that the legislature exercised, or might exercise, the power of government over Harvard College. Now, Sir, they never exercised any power over that institution, and they never attempted to exercise any power over it, except that of a judicial character.

Hamilton, in the Federalist, says: "The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."

Now, Sir, what is the use of applying any governing power to these institutions, except to restrain abuses? It was competent for the legislature to make any provision, almost, in relation to that college, because there was no power to circumscribe its action. They had no power to set the action of a legislative body aside, if its interferences with the corporation of Harvard College had been ever so numerous. Yet, it would be just as unreasonable to attempt to justify the legislature in its acts of interference with that corporation, as it would to justify the English government in its acts of oppression to its subjects at home and its subjects abroad. It would be just as absurd in one case as in the other. How

many acts of wrong make a right? If the first interference with the charter of Harvard College was wrong, then any subsequent act of interference was also wrong.

It may be maintained, that the acquiescence of the corporation in the acts of interference upon the part of the government, were a tacit admission by that corporation, of the right of the legislature to interfere. But gentlemen must remember that Harvard might have acquiesced because it had no power to resist. It might have forborne opposition to the interference of the legislature, because its opposition would have been unavailing. It must also be borne in mind that Harvard College was the weaker power, and that it was dependent upon the beneficence of the State for its pecuniary means to carry on its operations. It might naturally be expected, that, although they would regard the interference upon the part of the legislature as improper, yet that they would succumb to an interference upon the part of the State, to a greater or less extent, because the two parties were united together in a contract—one strong and the other weak,—the latter having no power to restrain any exercise of power upon the latter. But to justify acts of this sort would lead to every possible enormity.

But, to proceed. In 1657, additional powers were conferred upon these corporations. They were authorized to do certain things which they had not before been authorized to do. Among other things, a board of overseers was recognized. They accepted the act very cheerfully, although they well knew that they could not have prevented its formation if it had been unacceptable. I do not know of but one act of resistance upon their part, which was in 1676, when this charter was attempted to be enforced upon them, and they refused it.

Subsequent to this period, another act was passed, empowering the president and fellows of Harvard College to impose upon delinquent students a fine, not to exceed ten shillings, and stripes, not exceeding ten in number. This act was considered as enlarging the privileges of the corporation most essentially, because it suited the stern and rigid temper of the men of those times. It conformed with the habits of those men who had lived under monarchical institutions. This privilege was made use of very frequently, and under circumstances of very great solemnity. It would even be inflicted in the chapel, after a sermon, and then the president would proceed to pray that the infliction might be sanctified to the offender. [Laughter.]

There was also another interference which has been alluded to, and one which was submitted to, certainly not because it was considered a proper interference. When the overseers of the corporation, with the instructors and students, were called before the legislature to receive a reprimand. Now this was such an act of interference —so flagrant in its nature—that I suppose no one would claim it as a precedent for interference upon the part of the legislature. I suppose no one would claim it as a precedent, even if the act had been comparatively reasonable and moderate. Suppose that now, we should summons the president, professors, and students of Harvard College, to appear before us for any such purpose. We might call the spirits, but would the spirits come when they were called? When such a summons shall be given by our legislature, like Cowper, I should "like to be there to see."

Mr. KNOWLTON, of Worcester, (interposing). I desire to ask the gentleman whether, when the corporation, officers, students, &c., of Harvard College were summoned by the general court to appear before them, they did not appear —thus acknowledging the right of the general court to make the demand?

Mr. BRAMAN. They appeared, but it was not necessarily an act of acquiescence. It was rather an act of submission. It was a submission to a power which they could not resist. They submitted to a power they could not control, because they did not dare to do otherwise. But, Sir, I should like to see such an act enforced now. I should like to see the board of overseers, with its distinguished members of church and state, preceded by the president of Harvard College, with his academical gown, closely following in his footsteps the venerable chief justice of the Commonwealth, bearing in his presence the awful majesty of the law. Nay, I would follow the professors and tutors, fresh from their literary and scientific pursuits; and, bringing up the rear, the whole corps of students, wondering at that mysterious and awful power, before which they with their instructors, were to be brought. Well, Sir, all are marched in solemn procession into this hall, to receive, perhaps, the reprimand of the late speaker of the House of Representatives, or of the president of this Convention. Sir, I should like to see how our worthy president would compose himself to his situation. I would like to see him summon dignity adequate to the occasion. I would like to see whether he would proceed to administer that reprimand with all the self-possession and grace with which he performs the ordinary duties of the Chair.

But I presume, as I have said, that with regard to the interference of the legislature in this instance, no one would quote it as a precedent.

But there was another act of interference upon the part of the legislature, to which I wish again to allude. That was, the attempt to force the charter upon the corporation, in 1672. The corporation refused to receive it. Now, I wish to say that if the interference by the legislature with the corporation of Harvard College upon this occasion, was an act of contemporaneous construction upon one side, the resistance of the corporation to the act of the government, was a contemporaneous construction upon the other. One may very well balance the other, and I let them pass for what they are worth. I have only to say, that these are the only acts of interference under the colonial government. One is so flagrant, that no one would think of quoting it as a precedent, and the other was resisted by the corporation. That is the whole amount of control which the colonial government exercised over the corporation of Harvard College.

Let me ask, what would be gained by the change contemplated by the introduction of the Report of the Committee on Harvard University, and the legislature should proceed to elect members of the board of the corporation of that university, instead of leaving them to perpetuate themselves by election, as now. Would any more able and devoted men be secured to the college, than now compose that corporation? The members that have always, and do now, compose that board, are some of the ablest men in the community, and their fitness to discharge the high trust reposed in them, has never been disputed. No set of men could be elected by the legislature, that would have more needed wisdom to discharge the high obligations which are imposed upon them, and their fidelity and devotion to the interests of the college also are just as freely acknowledged as is their ability. I believe there has been no complaint in this respect. I do not suppose that their places could be supplied by persons who would be more untiring in their exertions to discharge the high trusts which are reposed in them. Being possessed of such a character themselves, the board would be more likely to choose persons of similar ability and devotion, to serve under them, and thus we have as good security as the nature of human things and the allotment of humanity admits, that there would be perpetuated such a body of men to all future generations, as would satisfy all the reasonable wants and expectations of the community. I suppose if the legislature were to elect the corporation, it would be required that it should embody as good a representation as it could, of the various religious denominations of the Commonwealth. These, it is well known, are very numerous, much more numerous than could be exhibited in a corporation consisting of seven members at any one time. Let me mention some of them. There are the Unitarians, naturalists and supernaturalists; the Congregationalists, old and new school, and intermediate schools; the Baptists, Calvinistic and Free Will; the Methodists, Protestant, Episcopal, and Protestant Non-Episcopal; the Universalists, the Restorationists, and the ultra; the Roman Catholics, and Quakers, not to mention numerous other sects existing in the Commonwealth, composed of the odds and ends and scraps of all other denominations, going under the fanciful name and delectable appellation of Come-Outers. [Laughter.] All these, of course, would claim some sort of representation in the corporation of Harvard University, because, being a State institution, as contended for by gentlemen here, of course they must have their share in the representation. Suppose all should be arranged in this respect. What should be done in regard to filling up the departments of instruction. These are so numerous that they might exhibit a good specimen of the great variety of the religious sentiment of the State. What shall be done with the Hollis Professorship of Divinity, at Harvard? How will you divide that? That is a professorship that acts more powerfully upon the theological opinions and character of the students, than all of the other professorships put together. What shall be done with that? Shall there be a coalition formed in regard to it? Political coalitions of two or more parties, for the purpose of dividing political offices among them, will answer very well in the State, but how are you to divide the Hollis Professorship of Harvard University? What is one fish, or one loaf, among so many? The only practicable method would be to select the professors annually, semi-annually, quarterly, or monthly, and let the students select their opinions according to the assortment which these various professorships would present them. I suppose, also, that gentlemen would require that political sentiments should be represented in the department of instruction, as well as the religious sentiments. Not long ago, a very distinguished candidate for a professorship at Harvard, was rejected by the board of overseers, because he had advanced some obnoxious opinions in regard to the Hungarian Revolution. The gentleman from Natick, (Mr. Wilson,) said the other day that he was not removed for his obnoxious political opinions, but for his ignorance and incompetency. I think, to charge such a body of men as the corporation of Harvard University, with choosing an ignorant and incompetent man to fill one of its departments of instruction, is a very strong assertion for the gentleman from Natick to make.

The gentleman said that he was rejected. He told us in another form, rather, that he was rejected because he made a false statement of the truth. A fact is truth. Put it in another form, and it means an untrue statement of truth.

Mr. WILSON, of Natick. I wish to explain by saying that I did not mean what the gentleman says. I meant precisely and exactly what I said then, and now repeat, that Francis Bowen was rejected for the office to which he was nominated, for three reasons: in the first place, for his sentiments and opinions; in the second place, for his ignorance of history; and in the third place, for mis-stating and mis-quoting history; the truth of which, I am ready, here or elsewhere, to prove.

Mr. BRAMAN, of Danvers. The expression which the gentleman used, struck me so forcibly at the time, that I am pretty sure I recollect it. I am quite sure that he said he was rejected for ignorance and incompetency. He says now that he was rejected for ignorance. Then, I repeat again, that it is a strong assertion for the gentleman from Natick to make. Let me say farther, that the members comprising the corporation of Harvard University—I mean no disparagement to the gentleman from Natick, for whom I entertain the highest respect—are quite as competent as he is to judge whether a candidate for a professorship at Harvard is an ignorant or incompetent man. Was there ever any historian, or narrator of any portion of history whatsoever, who has not been detected in mistakes; and I have no doubt that if Hume and Gibbon were alive, and should advance opinions obnoxious to the ascendant party in the State, that they would be rejected by the board of overseers if they were nominated by the corporation of Harvard, on account of ignorance and incompetency. I have not the least doubt, if Macauley should be presented as a candidate for a professorship, if it was known that any of his opinions would not agree with those of the dominant party, that he would be rejected also for his ignorance and incompetency, for the reason that some individuals have criticized his history, and detected mistakes, which they consider as important. All historians commit mistakes, and it cannot be otherwise. They belong to the imperfections of humanity. But, however this may be, there is no doubt that a coincidence of opinion with the dominant party would be considered as an indispensable qualification for a candidate. Men would be chosen to fill departments of instruction, on account of their political opinions, in preference to those who are much more competent to fill the offices, because they were of a different persuasion. The numerous offices of instruction at Harvard, would present an invitation to patronage too inviting to be resisted, and violent partisans would be rewarded with places of instruction in the university, for whom there was no room in the political department. Stump speakers would teach stump rhetoric from the chair of oratory. There would be professors of logic, whose speeches would be of no other use than to make very excellent specimens of false reasoning. The fair sex, not always having a fair representation at the university, knock at the doors of the Convention for admission. I mean the male portion of the sex. [Laughter.] They have already knocked at the doors of the Convention, and they have knocked at the doors of the university also. I know that the Convention have treated the application of the fair sex in rather an ungallant manner, notwithstanding the earnest advocacy of Mr. Lucy Stone, and Miss Wendell Phillips, Esq. I should not wonder if, in some future time, and the progress of that political perfection about which we hear so much, that the women shall be admitted not only to the right of voting, but also to a share in the public offices of the other sex, and along the line of illustrious names of those who have presided over the university at Harvard, would be the names of Abby, Ann, Lucy; and then when we shall have a bloomer at the head of the university, it would indeed be entitled to the appellation of *alma mater*, in more senses than one. [Laughter.] Let me say, in conclusion, that I would caution gentlemen very earnestly against doing anything which would commit, or seem to commit, the State to a violation of public faith. The character of Massachusetts for integrity and adherence to justice, has always been high. She has now repaid her obligations, and her bonds are confided in now, as the most valued securities in the world. This reputation for integrity ought to be dear to all her sons, who, while they take pride in her industry and enterprise, in her literary and historical ability, hold dearer than all, her character for uprightness. Let there be no spot on the fair garment of her renown. Let there be nothing done, or attempted to be done, that shall give our posterity cause for emotions of regret and shame; and may her name go down to future generations adorned with every virtue which shall cause the heart to swell; and may the Constitution ever be held in grateful and honored remembrance.

Mr. BOUTWELL, for Berlin. I shall not detain the Convention so long as to prevent the question being taken before the usual hour for adjournment arrives. This question is within a small compass, and does not, to any considerable extent, involve the early history of the university. We propose, by this resolution, to declare that the

legislature shall have power to do all that may be done by the people, in reference to Harvard University, and we claim that the people may do everything within the limit of supreme and complete sovereignty, except so far as their power is controlled by the Constitution of the United States. That instrument declares, that no State shall pass any "law impairing the obligation of contracts." We propose, by this resolution, embodied in the Constitution of the State, to authorize the legislature to march boldly up to that line, without, however, authorizing them to go one step farther.

Now, then, the propriety of the resolution is in this: that there is at present some doubt on the question whether the Constitution of the State authorizes the legislature to go thus far, or not. Therefore, if the people, in their Constitution, have imposed any restriction upon the legislature, we intend hereby to remove it. We do not intend to harm the college in any manner; but propose to place in the legislature the authority which now resides in the people. This is a plain proposition. Therefore, it does not involve the consideration of the question, whether the college has rights under a contract, or not. I have an opinion on that point. It differs entirely from the opinion expressed by the gentleman from Danvers, (Mr. Braman,) and I think that in a word or two, I can state the elements on which an opinion may be formed by any individual. It is a plain principle, that that which a person produces or creates, is his own. The State created Harvard College; the Constitution declares that it was founded in 1636, two years before the bequest of John Harvard. The record is, that our ancestors created it; the fact that the general court, in 1636, appropriated four hundred pounds for a school or college at Newton, afterwards Cambridge, identifies our ancestors, constitutionally speaking. That is the declaration. The general court created this institution and endowed it. Who shall control it? The general court and their successors, the people and government of Massachusetts, or the corporation of Harvard College? I take it that what our ancestors, as the government of this State, created, we, the governors of the State to-day, control and use, unless we have surrendered that control. I ask gentlemen to consider this plain proposition of law and of right. For there is no difference, whatever men may suppose who have devoted themselves to the consideration of particular topics, there is no difference between law, the perfection of human reason, and that attribute or rule of right and of justice which the Supreme Creator has implanted in the breasts of all. What is this rule? It is, that what we have created we may use, and that that which we have created we may use forever, unless we have surrendered its use into other hands.

Mr. BRAMAN, of Danvers. The gentleman says, that what a person has created, it is his to control entirely. I would like to ask him, if a person who has created a thing has not a right to part with it by giving it away.

Mr. BOUTWELL. I will come to that soon. Those who claim that the right of control has been surrendered, stand in the place of grantees, and it is for them to show explicitly, definitely, and accurately, when that surrender was made. I would ask the gentleman from Danvers, to point to the time when, and the manner in which, that surrender was made on the part of the Commonwealth. Throughout the whole period of its history, it has never surrendered its right to control the college at Cambridge. Trace the records all along through the Colony, the Province, the State, covering a period of more than two hundred years, and you will find nothing to show that we have surrendered our control. Therefore, if we have not surrendered it, it stands to-day. And it is not for us to show the negative, but for those who contend that it has been surrendered, to make that fact appear. They will find that a very difficult point.

I have a word to say to the gentleman in reference to the authorities upon this point, and especially in regard to the Dartmouth College case. That case I have not read for some time, yet I think I can state the principle upon which the decision of the supreme court of the United States rested. President Wheelock created an institution in 1769, afterwards known as Dartmouth College. In that case the supreme court judged, as we judge to-day, that that which an individual has created, he has a right to control, and inasmuch as President Wheelock had invested that college in his successors forever, there was a contract; and the State of New Hampshire could not come in and violate it.

Now, we stand upon the doctrine of a contract; and inasmuch as our colonial government established this institution, it is not in the power of any body to come in and say we shall not control it. I do not propose to take anything from Harvard College which they have. If the doctrine of a contract gives them exclusive control over that institution, they will have it if we pass this resolution and the people adopt it. But the point of difficulty which we wish to relieve, is this. There may be some doubt as to whether the people, by their Constitution, have conferred the authority upon the legislature to deal with

Harvard College, to the extent, and in the manner, that the people themselves may deal with it. We purpose to remove all difficulty upon that point, by giving to the legislature power to do what the people of the State have the right to do, and nothing more. That is safe, proper, wise, and just. Because, whatever may be said of the character of Harvard College,—and I am not here to denounce it, or make any imputation upon it,—I know, well enough, that there are men on this floor who have been acquainted with it, and who will not endorse the doctrine of the gentleman from Danvers, by any means, either in public or in private. They will not endorse it, Sir; and I believe there are those connected with the college to-day, who were as much alarmed two years ago, at the proposition to make the overseers elective by the State, as the gentleman from Danvers is in respect to the corporation, and those same gentlemen are now satisfied that that was a wise and proper measure. The cause of education has been promoted by it; and I look to this institution, notwithstanding the position which I occupy is somewhat hostile, perhaps, as the apex of the educational system of this Commonwealth. And in order that it may be free from sectarianism, and from the control of any party or sect, we put it on the basis on which our common schools rest. Nor will it happen that all the odds and ends of civilization and society will come in and control this college. Gentlemen know well enough the character of Massachusetts; the people will regulate this institution as they regulate other institutions in the State. Gentlemen need not be alarmed. Sir, there will be no coalition in reference to the university at Cambridge. And if there were, it would not be a very disastrous thing, by any means. It might happen, that by bringing together in that institution, men of different opinions in the government, in the discipline and education of the young men, that some broader and better ideas of humanity might be acquired. I am, therefore, in favor of the passage of the resolution, not because it interferes with any of the rights of the college,—for it does not,—but because it gives to the legislature that power which we now believe resides in the people; and we trust that it will be exercised for the good of the Commonwealth, and the advancement of learning in the university.

Mr. BRIGGS, of Pittsfield. I had the honor to be a member of the Committee which reported this resolution, and, though I was not present at the meeting when the resolution, was adopted, I was at a previous one, when, I believe, substantially the same proposition was agreed to. This is a matter environed with a good many difficulties, if we choose to enter upon the ground where those difficulties exist. But, I believe, it was the opinion of the Committee, and I concur with the gentleman who last spoke, that this resolution would avoid difficulties which would open upon us if we advanced farther, and not do any violence or wrong to the corporation of the college, and, at the same time, assert all the rights of the people in respect to it. Sir, my wish with respect to the Cambridge College, was this: that just so far as the State was concerned, we should cut her adrift; just sever, in an amicable manner, all connection with her as a State, and let the college stand as the other colleges do, upon her own foundation, and be left to her own conduct and management. But it was found, and I think any gentleman who will look the matter in the face, will find, that it was somewhat difficult to do this; certainly the Committee could not see their way clear to do it. They, in their labors, which were repeated and earnest, came to the result which you find in the Report, and I concur with the gentleman who has just taken his seat, that that leaves the matter substantially where it is now, though, perhaps, under a more clear and distinct declaration; that is, the resolution declares that the legislature shall have the power over this institution, which, by the Constitution of the United States, it may have. Sir, it has that now, as I apprehend. But this is a clear, plain, distinct declaration to that effect. Now, Sir, what that power is, I do not think we should discuss, and, though the gentleman from Worcester, and the gentleman for Berlin, have stated, learnedly, intelligibly and ably, the subject, yet, let me say that this is not the place to discuss a great constitutional question of this kind, and the discussion is not needed. The gentleman for Berlin says, he is very clear in his opinions on this subject, as I understand, that the State has the power and control over this corporation. It may be so, and it may not be so. It may not be amiss to say, that our predecessors, something like a generation ago, had this same subject before them, and I think they came to a pretty general, if not a unanimous conclusion, that they had no such power as this. They were good men, wise men, learned men in the law, who spoke and acted on that occasion, and they left the matter as we find it. Now, I think we shall do wisely in doing the same thing; and I believe, if this resolution is adopted, it does not infringe upon the rights of the college; and if, hereafter, a legislature shall attempt to exercise the powers which the corporation think they cannot exercise, all that will remain to be done will be, to go into the proper judicial tribunal,

and let them settle it. I hope the resolution will pass in the Committee, and that it will pass in the Convention, and, I think it will meet with the approbation and satisfaction of those, of all denominations and politics, who sent us here.

Mr. PARKER, of Cambridge. I wish to ask of the gentleman from Pittsfield, and the gentleman for Berlin, and the chairman of the Committee, one or all of them, whether they understand—and I wish the one who does understand that this makes any difference, would make the answer—I wish to ask them, whether, if this resolution passes, and is incorporated into the Constitution, it will give the legislature any more power than it will possess, if no action is taken upon the subject?

Mr. BRIGGS. For one, I will answer that I do not think it does. I agree with the gentleman for Berlin, perhaps, in saying, that if the existing Constitution does not confer as full power upon the legislature as the Constitution of the United States would, then this resolution may confer an additional power. My opinion is, that it does confer no power whatever, and that it does not substantially, if at all, change the relation between the State and the college.

Mr. PARKER. I would ask for the understanding of the gentleman for Berlin, on this question, if he has no objection.

Mr. BOUTWELL. I understand this resolution to confer all the power upon the legislature, which the people of the Commonwealth have, with regard to the institution at Cambridge. The existing Constitution may, or may not, confer all the power which the people of the Commonwealth have. If the gentleman asks what I understand to be the limit of that power, I take it to be this: The power of the people of this Commonwealth is complete and supreme over that institution at Cambridge, except so far as it is limited by that provision of the Constitution of the United States, which says, that no State shall make any "law impairing the obligation of contracts." Therefore, if there be any doubt about the power conferred by the present Constitution, the legislature has permission to march up to the line laid down by the Constitution of the United States, and we remove that doubt, by giving them the power.

Mr. BRIGGS. I understand that all the power which the people have over this subject, is the power which they have asserted in the provision of the Constitution alluded to, reserving to themselves and the legislature all the power that belonged to the provincial legislature over the subject.

Mr. PARKER. The purport of my inquiry, was, whether, in the opinion of gentlemen, this resolution made any change. If the gentleman for Berlin has no objections, I ask, if in his opinion, this provision inserted in the Constitution, will confer a greater power upon the legislature, than they possess at present, and if so, what that power is?

Mr. BOUTWELL. I suppose the gentleman from Cambridge asks me for an interpretation of the Constitution of the State. I am not quite prepared to give that. I say, that in the minds of some gentlemen, there is a doubt, as to whether the people of the Commonwealth have conferred upon the legislature all the power which the people themselves have, and that this resolution is for the purpose of removing that doubt. If the legislature has not got the power now to march boldly up to the line laid down by the Constitution of the United States, we desire to give that power, by the act of the people.

Mr. PARKER. I asked merely for the personal opinion of the gentleman for Berlin, in relation to the matter, whether this resolution makes any change. I turn to the chairman of the Committee, and ask him.

Mr. KNOWLTON, of Worcester. Not being a professor of law, I do not know that I am qualified to answer that question.

Mr. PARKER. I do not ask the question as a matter of right, but I would be glad to have the gentleman's opinion.

Mr. KNOWLTON. I understand the matter as has been stated by my friend, the delegate for Berlin. If there is a power in the hands of the people which is not conferred upon the legislature by the present Constitution, over the institution at Cambridge, we express the opinion, that the legislature has that power, and that they may exercise it. It seems to me, to exist in the Constitution now, rather as a matter of inference, than of express declaration. If it exists there as a matter of inference, then it is to be determined by judicial authority. But, by the resolution, we propose to express an open and explicit declaration in the Constitution, that the legislature has that power, and shall exercise it.

Mr. PARKER. I made the inquiry of gentlemen in favor of the passage of this resolution, for the purpose of ascertaining the views which they individually have upon the subject, in order that I might govern my action as a member of this Convention—not as a professor of law, Sir, but as a member of this Convention—upon the subject matter before the Committee at this time. If this resolution, as put into the form of a constitutional provision, is entirely inoperative and ineffective, giving to the legislature no more power than the

legislature at present possesses, then all the objection which I could possibly have to it would be that it is useless. The opinion that I entertain of it myself, after having examined it with all the care of which I am capable, leads me to just that result, that it is entirely inoperative; and, therefore, I can raise no other objection to it. But, if it is unnecessary and useless, that is, to my mind, a sufficient reason why we should not adopt it as an amendment to the Constitution. If I am mistaken in this, I desire to know how far I am mistaken; and for this purpose, I wished to ascertain the individual opinions of gentlemen in relation to the operation of this provision, so as to know, if it is to accomplish something, what it is expected will be accomplished by it, and then I could tell better whether I had any objection to it or not. If it is to accomplish anything, I desire to know what it is to accomplish—what power it is to give beyond that which is already given. Until I know that, of course I do not know whether I object to it or not. With the view which I have of it at present, I have no disposition to detain the Committee with any discussion, farther than to say that my vote will be given against it, because I deem it inoperative and useless.

Mr. FRENCH, of New Bedford. Mr. President: I regret, Sir, that any gentleman upon this floor, any member of this Convention, should undertake to hold up to ridicule the lady and gentleman who had the honor of appearing before the Committee on the Qualifications of Voters. Sir, they need no defender in me; for, if that lady and that gentleman were here, and had an opportunity of defending themselves, I run no risk in saying, that no member of this Convention would envy the position of the delegate from Danvers, (Mr. Braman,) who so irreverently attacked them. Sir, there are gentlemen whose position enables them to say what they please in many places, and no reply can be made. It is not so here. Let me say through you to that gentleman, that, although he may slander them and hold them up to ridicule, and attempt to excite the mirth of this body by saying "Mr. Lucy Stone," and "Miss Wendell Phillips"—he may do that, Sir, but he is powerless to reproach them.

The question being then taken on the adoption of the resolution, on a division, there were—ayes, 125; noes, 31—so it was agreed to.

Mr. BOUTWELL moved, that the Committee rise and report to the Convention that the resolution under consideration ought to pass.

The motion was agreed to. The President having resumed the chair of

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The chairman, Mr. Sumner, for Marshfield, reported accordingly.

The question was then stated on ordering the resolution to be read a second time.

Mr. LOTHROP, of Boston, moved to amend the resolution, by inserting after the words "Harvard College" the words, "the Board of Trustees of Williams, and the Board of Trustees of Amherst College."

Mr. BRIGGS. As I said before, Sir, I was not present when this resolution was drawn, but my impression is, that its language conforms as nearly as possible to the language of the acts of incorporation of those colleges. The gentleman from Worcester can state how that is; but I understood that it was intended to place her upon the same ground as the other colleges, in this respect, reserving any rights of contract.

Mr. KNOWLTON, of Worcester. I will read the language of the charters of those colleges, and if gentlemen will turn to the resolution as printed in document No. 72, they will see that the language of the resolve is almost identical with that of these charters: "that the legislature of this Commonwealth may grant any farther powers to, or alter, limit, annul or restrain, any of the powers vested by this act in the said corporation, as shall be judged necessary to promote the best interests of the said college." The Convention will find that, by turning to the law passed in the year 1793.

Mr. LOTHROP. I see no objection to my amendment on that account, but a farther argument in favor of it, from the fact that the same language is used in the incorporation of those two institutions. If, as has been understood, and as has been stated here by learned legal authority, and by some of the members of the Committee, this resolution does not confer upon the legislature any power over Harvard College but what it now possesses, and if we are to have anything about one college in the Constitution, I would have all colleges put upon precisely the same platform. I would have the recognition of one as distinct as that of the other, and the same power that is now expressed in the acts of incorporation reiterated again in the Constitution, if it is necessary to reiterate it in relation to Harvard College. If the legislature have all the power now which is given to them by this resolve, in relation to the president and fellows of Harvard College, it is unnecessary to make the statement at all; if they have not all this power, then I would, in the recognition of that institution in the Constitution, recognize all the others, and place them all upon the same platform. No evil is done, certainly,

by the introduction of two other colleges; and we announce the great constitutional fact that all the colleges stand upon the same platform and bear the same relation to the State.

The PRESIDENT. The Chair will state that the amendment moved by the gentleman from Boston, refers to a subject different from that under consideration; and therefore, by the rules of the Convention, it is not in order. The subject under consideration, is in relation to Harvard College; and the proposed amendment relates to other colleges.

Mr. LOTHROP. I submit to the ruling of the Chair.

Mr. HOPKINSON, of Boston. I propose to amend the resolve by striking out the words "advancement of learning," and inserting in lieu thereof, the words "best interests of the college," so that it would read as follows:—

The legislature shall forever have full power and authority, as may be judged needful for the best interests of the college, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the president and fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted for the purposes of education in this Commonwealth.

The object of this amendment will be apparent. It is to carry out precisely the intention expressed by gentlemen here upon this floor, who tell us that the resolve under consideration is to put Harvard College upon the same footing with the other colleges; and I find that in regard to Amherst College, the language is precisely that which I have incorporated into the amendment. The extract from the law which has been read by the gentleman from Worcester, says, such powers "as shall be judged necessary to promote the best interests of the said college." I have used the words "the college," omitting the word "said." I do not propose to make an argument upon this point, but I do propose to say, that if the intention is to put them all upon the same footing, and if the only reason why such an amendment as was proposed by my colleague who sits opposite, (Mr. Lothrop,) should not be adopted, is, that it is unnecessary, inasmuch as the language used was intended to be the same as the language of the other charters, then it is well enough to conform to that language. Now, Sir, it may be asked, perhaps, whether there is any substantial difference; but it has been thought a sufficient answer to that question, to say that there *may* be a difference. For that reason, it was deemed proper to adopt a provision in the Constitution which it seems is generally understood to leave the college precisely where it is, but which some gentlemen think *may* make some change, but what change they are now unprepared to state. I do conceive that there may be difference, and that difference consists in this: the legislature, in order to carry out the Constitution practically, must act in reasonable conformity to the design of the power which is granted in the Constitution; and there might be legislation very diverse from "the interests of the college" covered up by some general idea of promoting the "advancement of learning" in a general sense; legislation which would not be for the interests of the college, and so palpably so that the court would feel bound to set it aside. It appears to me, that if the intention is to put all the colleges upon the same platform, it is expedient and proper to adopt this amendment.

Mr. BOUTWELL. I suppose the proper interests of a college are to promote learning, so that we propose to come to the result directly, by saying, that the legislature shall have power to make all such rules as may be necessary to promote the interests of learning. It might happen,—I do not think it would happen, but it might happen,—that in the judgment of some people, the interests of a particular college would be somewhat different from the interests of learning; and for that reason, I do not want to leave that question open. All that we want of a college, is to promote the interests of learning, and, for that reason, we desire to say in our Constitution just what we mean; so that if, in the judgment of anybody, the interests of a college should happen to differ from the interests of learning, they could not have an opportunity to put that construction upon the provision.

Mr. GILES. I think that my colleague who presented this amendment, upon a full examination of the subject, and reflection, would deem it unnecessary. He would be satisfied that the same object is already attained; for, as I understand it, the very amendments which he now proposes to put in, were left out because they were already in the Constitution, in relation to Harvard College. In the proviso of the present Constitution, which was referred to your Committee, you have 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." That stands now, and is to stand.

The Constitution makes it the special duty of the legislature to cherish that university, and in-

deed to cherish all our institutions of learning of every kind. In looking through the previous charters of Harvard College, my friend will find the expression, "for the advancement of learning," a good Baconian phrase, "invented," if you choose, by Bacon, and immortalized by the work bearing that name, or upon that subject, which has made his fame as high, as solid, and as immovable as Mont Blanc, or Mount Atlas, or any other mountain whose summit glistens in the sunlight shed upon its everlasting snows. It is a good phrase, and I would not strike it out. It directs the legislature directly, and at once, to the point mentioned by my friend for Berlin, (Mr. Boutwell,) that is, "for the advancement of learning." We do not wish to cherish Harvard College, or any other institution of the kind, for any other purpose. That is the polar star of its destiny. I believe, therefore, that the acts of future legislatures, as referring to this institution, will not only have to be "for the advancement of learning," but for the benefit of that university, as far as that university exists for the benefit of learning; and I understand that to be its object—meaning by "learning," of course, the broad, catholic sense which was given to it by our forefathers, which included divinity first, then law, and the classics, and mathematics, and Hebrew, and all good learning, which is summed up in the fifth chapter of the Constitution, in language which is not exceeded by any sentence that ever was constructed in the English tongue. That paragraph alone has brought more honor to Massachusetts, where it has been seen and understood, than all the blue books that any legislature, or succession of legislatures, have made in ten years,—not to disparage the legislature, but to exalt it. It is a monument of the wisdom, and of the purity of language, and of the eloquence of expression, used by our forefathers. I hope, therefore, that my friend from Boston will not move to strike out this expression. I really think that the resolution, as it is, embraces the whole object, and is sufficiently definite to guide the whole action of the legislature. If there were time, and the occasion required it, and I felt a disposition to use my half hour, I should like to say something upon it; but, I see that the resolution is likely to be adopted as it is; and as that is my desire, I will not farther detain the Convention.

Mr. HOPKINSON, of Boston. It was not my intention, when I offered this amendment, to substitute a better phraseology than that which I have moved to strike out, because I am equally as partial to it as the gentleman who has just sat down. My design was, to call the attention of gentlemen to the fact, which seems to be disputed, that there was a distinction now being made between the colleges, in a resolution professedly drawn up in order that they might all be treated alike, and all placed upon the same footing. It was not, therefore, for the purpose of delaying, or defeating any action upon this subject, but for he purpose of pointing out distinctly, what appears to me, to have the air of an intention to make distinction, and single out this college for dissection, leaving the others untouched. Had I proposed to strike out the word "hereafter," in the last line but one, it might, perhaps, have effected the same purpose. If it is expedient to make any provision applicable to one college, it is expedient in reference to all.

I do not care to insist particularly upon this amendment, because I do not think that it will make very much difference. My purpose is gained, if I point out the distinction between the language proposed, as applicable to this and the other colleges.

Having made this explanation, I withdraw the amendment.

Mr. FRENCH, of New Bedford, moved a suspension of the rules, in order that the question might be taken on the final passage of the resolution, without passing the question over to another day.

Mr. BREED, of Lynn. I hope the gentleman from New Bedford will withdraw that motion for the present.

Mr. FRENCH. I will not press it, if there be objection.

Mr. BREED. I move that the Convention adjourn.

The motion was agreed to, and the Convention, at half past six o'clock, adjourned.

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SATURDAY, July 16, 1853.

The Convention met, pursuant to adjournment, at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read and approved.

*Hour of Meeting on Monday next.*

Mr. CRESSY, of Hamilton, moved, that when the Convention adjourn, it adjourn to meet at ten o'clock on Monday next.

The motion was agreed to.

*Final Adjournment of the Convention.*

Mr. KNOWLTON, of Worcester, presented the following order, which was adopted:—

*Ordered*, That be a Committee to consider and report at what time the session of the Convention may be brought to a close.

The following gentlemen were appointed as a Committee for this purpose: Messrs. Knowlton, of Worcester; Schouler and Giles, of Boston; Cushman, of Bernardston; Wilson, of Natick; Burlingame, for Northborough; and Eames, of Washington.

*Adjournment this Day.*

Mr. WILSON, of Natick, moved that the order to adjourn at one o'clock, be modified for this day, so that the time of adjournment be extended to two o'clock.

The motion was agreed to.

*Orders of the Day.*

On motion by Mr. WHITNEY, of Conway, the Convention proceeded to the consideration of the Orders of the Day, the first order being the resolve on the subject of

*General Laws for Corporations.*

It was read, as follows:—

*Resolved*, That it is expedient to incorporate into the Constitution, a provision that corporations may be formed under general laws, in all cases where the object of such corporation is attainable under the same; and where provision is thus made by general laws, no corporation shall be formed by special act.

The pending question being on the following substitute, offered by Mr. Davis, of Worcester:—

*Resolved*, That it is expedient to incorporate into the Constitution, a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

Mr. DE WITT, of Oxford. I would inquire of the Chair, if an amendment to this substitute will be in order.

The PRESIDENT. It will be in order.

Mr. DE WITT. Then, Sir, I move to amend the substitute, by inserting before the word "corporations" the words "manufacturing, mechanical, and banking."

Mr. HALLETT, for Wilbraham. The amendment proposed by the gentleman from Oxford, (Mr. De Witt,) is designed to embrace manufacturing, mechanical, and banking corporations, and thereby, by that limitation, to admit all other incorporations. I am opposed to that amendment. The proposition, as it is reported by the Committee, contains the general principle, that it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act, when the object can be attained by general laws. That, I regard, as a fundamental principle worthy of being incorporated into the Constitution; but if you incorporate into the Constitution a provision that certain trades or occupations shall not have charters, leaving it to be inferred by implication, that all others may, then I think you are making your Constitution a mere specific act of legislation. I think, therefore, that this amendment involves a specification which ought not to be adopted, as a general principle, because it makes a discrimination. It virtually says to the legislature, "you may take care of the interests of certain classes, in this respect, but in regard to the interests of other classes, you shall not interfere." I go for a general principle, to be applied in all cases—either that you should leave to the legislature a discretionary authority, untrammelled by a limitation of this kind, or else leave the matter in the precise manner in which it now stands, permitting every individual to come and get a charter of incorporation, by purchasing a ticket in this lottery of special legislation; because that it is a lottery, every one knows who has been engaged in it, either on his own account, or for the benefit of others. The provision, submitted as a substitute for the resolution first reported, brings the principle directly to our consideration. It seems to me to be one of the best expressed provisions for a fundamental law, that I have yet seen introduced in this Convention.

Now, Mr. President, we have simply to choose between special legislation upon incorporations, in all cases, or general legislation in cases where general legislation will meet the case. The proposition to which I allude, is the one which is offered as a substitute, and which I perceive was offered by the gentleman from Worcester, (Mr. Davis).

*Resolved*, That it is expedient to incorporate into the Constitution, a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

That is a provision which I desire to see incorporated into the Constitution, and it is the most unexceptionable provision, which, in my judgment, it is possible for words to place there. It expresses exactly what we mean, and that is, if I understand it, that all subject matters of incorporation which can be embraced by provisions of general legislation, shall be provided for, by general laws, which the legislature will be bound to enact, by this injunction in the Constitution.

This will take care of all general business concerns, and, on the other hand, whenever a great question arises, which the legislature, in their judgment—subject to the revision of the judiciary if they violate this provision—shall determine is not within the powers of the general law, shall require some special guards or privileges, then the legislature is at liberty to act, by a law to meet the case.

Now, I ask, if there can be any citizen of this Commonwealth, who has no other good in view except that of the Commonwealth, who will stand upon any other principle than that of equality, as here set forth in all business concerns? Can he desire anything more than this? because, if he believes in the propriety of embodying fundamental principles in the Constitution, he has no right to ask for special privileges which are not conferred by general laws; and, in this matter of special incorporations, it is neither more nor less than a special privilege or advantage, conferred upon the few to whom it is given, to the exclusion of all the rest; and to obtain it, outside of a general law, a great public good must be made to appear, which the general law cannot secure.

Mr. President: I am not going into the general question of incorporations. It is one on which I have said and written a great deal, in the course of my life; but I am not considering it now as a question between parties. It comes up here as a fundamental principle; and therefore, I say, in regard to this matter of special incorporations and privileges to enable one man or class of men to carry on any particular occupation or business without giving to all others the same rights, that it is special legislation; and, therefore, when you come to that point, you must do one of two things: either leave it to the will of the legislature to determine in each case that certain persons or classes are, or are not, entitled to these special privileges, and thereby violate the Bill of Rights, or else you must so open this privilege of incorporation, that any and every man may avail himself of it under general laws, giving to the public a proper security, and conforming to proper restrictions.

In regard to this matter of special business incorporations, many persons have held, and still hold, the doctrine that they ought never to have been granted, except under general laws. But if the people, for a long series of years, have failed to check special legislation hitherto, and it has run on to such an extent that benefits and favors have been conferred upon a minority of the community, to the exclusion of a large majority, then the only way is to go on and extend it as far as you can; and for that reason, in regard to this matter, I would at once either establish a constitutional rule that every man, or every class of men, petitioning for any trading charter of incorporation, should have it, as a matter of course; or else I would establish a general rule under which every class of men might incorporate themselves, conforming to the laws in such case provided; and there is not a single special provision which is requisite for a company or association, without exclusive favors, to carry on any trade, occupation, or business, that cannot be incorporated into a general law.

But, it will be asked, "Have we not a general law now in regard to corporations?" True, we have; and what is it? How does it operate? Why, Sir, you will not allow anybody to have a charter of incorporation for anything, unless he petitions the legislature, issues the required order of notice, goes before the committee, employs his counsel, has an agitation about it whenever he is coming in contact with his neighbors; and, finally, either obtains his charter of incorporation, and gets an advantage he is not entitled to have, or loses his time and money if he does not obtain it. Now, what sort of a tribunal is the legislature, to decide upon such matters in individual cases? Why should that body be called upon to determine between the interests of two competitors in trade in some city or village; one party, perhaps, starting the business upon his own real capital, and another upon capital borrowed from his neighbor, or a bank which he has got chartered, each contesting which shall have the advantage over the other? To interfere in such a case, is "special legislation," and that is the very special legislation which is applied to these business corporations, manufacturing, trading, mechanical, and banking, and others of a like nature, the result of which is, that the legislature in this Commonwealth has become a complete nuisance. Yes, Sir; your legislature has become a public nuisance. I speak, of course, not of the individuals composing that body; for them, individually, I have the highest respect; and I would say that it is impossible that in the Commonwealth of Massachusetts you can gather together, as the representatives of the towns and cities, four hundred men of whom the majority will not be both honorable and intelligent; but when they get here, they are operated upon by influences of which they are not aware in judging of what is proper and what is improper, fair or unfair, in these matters; and it would be expecting too much of human nature, to suppose that they will not, on some occasions, make mistakes, and do great injustice to petitioners, and great wrong to the public.

They must sometimes give the charter where they ought not to give it, and withhold it where it ought to be granted. Well, how will you avoid that result? Instead of requiring that every individual or association shall come and apply for the privilege of corporation, and that no person shall have it unless he has the special favor of the legislature, you will say, by this proposed amendment, that the legislature shall make a general law, and when it is made, that those who conform to it, shall have the privileges and benefits of it. That is all we need say in regard to any business corporation, all that the legislature need do, and all that the people want. This will not destroy competition, nor check industry. The interest of the public consists in opening all business to competition, and that interest only wants to be guarded against fraud, and the injury which may arise from persons recklessly, unguardedly, or with fraudulent or speculatory intention, engaging in those various combinations of business which come to the legislature for charters. Can anything be more simple than to say that general laws shall govern them in all cases? and then make the general law safe and practicable.

If you do this, the legislature, which has well been considered as a nuisance, because of this very kind of endless and conflicting special legislation, will cease to be such, and you will be able to confine its sessions not only to one hundred days, but much within the hundred days. Take, for illustration, the action of the last legislature—and I do not mean to censure that legislature, because I believe that whatever fault is connected with it, was, to some extent, the fault of our system, rather than the fault of the individuals which composed it—I say, if you look over the whole course of proceeding of that legislature, you will find there never was a body that labored harder than they did; but they were working upon the miserable issues brought before them, and they were working upon a false system, namely: that the legislature is assembled every year to legislate upon every man's particular business, instead of framing general laws, and then leaving every man to take care of his own affairs. Unless we strike down this sort of special legislation, the legislature, because of the increasing business and enterprise of the community, which is constantly accumulating, must go on, not only during the one hundred days, but from day to day, and become not only a general court, but an everlasting and unadjourning court, the mere makers, managers, and agents of special incorporations.

Now, as to the practical operation of this principle. Is this sort of legislation wholesome or necessary? I think there are some business men here, within the sound of my voice, who know the practical operation of business interests of this sort, and who begin to perceive that Massachusetts has gone too far in special legislation. Take, as an illustration of the practicability of general laws, one interest, to which the attention of men of science and business, having large commercial views, has been recently directed. I mean the great copper interest of the West, which is growing up in this country. Why, Sir, in a very little while, the copper of the United States, by reason of its great superiority and productiveness, will supersede that of all other parts of the world. In all the great manufacturing marts of the world, the copper of America will become as common, and as much in demand, as the best staple cotton of the United States. But all the resources of this material, which lie all around the northern lakes, are being developed under one simple general law of the State of Michigan, which does not occupy more than a page or two upon the statute book; and there is now invested, under that general law, millions of capital and industry; and I undertake to say, invested with as much security and profit as it could be under any special act of incorporation upon the statute book of Massachusetts; and invested, too, with as much safety and security, not only to the companies, but to the public. One general law has done all this, and nobody has complained of any fraud, or any danger of fraud, from it, except the tendencies of all business to speculation; and the stocks of these companies are just as good in our market, as are the shares of the Lowell Railroad, or the State Street banks. Now, if all this has been done by this young State of Michigan, having these rich resources within her bosom, why cannot the same thing be done by the old, experienced, and intelligent State of Massachusetts?

I say, Mr. President, there cannot an argument be fairly raised against the proposition that general laws should be made, to enable persons to associate together for the purpose of performing all business transactions which can be performed under general laws. What gentleman contravenes that proposition? No one can.

What do you need to provide for in these general laws? You want simply to give corporations the power of succession, that vital principle that will never let them die out; you want to alter the mode of administration, in regard to the real estate which may belong to them, so that when one member of the corporation dies, it shall not work the dissolution of the corporation. These are fundamentally the whole principles which you need to insert into these general laws, with, of

course, proper guards and securities to the public, and especially to labor. Now, in regard to this last point of absorbing real estate into these incorporations, I want to say a word, for I am a practical man, and when propositions are presented to me, they do not strike my mind very favorably, unless I see something practical in them. Hence, when I have heard in this discussion of women's rights, very learned gentlemen elaborating themselves upon it, I have wondered why they could not think of one practical fact, by turning their attention to which, they could do more good to the women than they can by talking this enthusiastic nonsense all their lives. I refer to the subject of woman's dower. That is a practical subject, but this discussion as to whether women shall participate in politics, or whether she shall have the exclusive monopoly of a certain branch of medicine, is all without point, use, or meaning. But when we talk about a woman's dower, and her right to have it secured to her, in all cases, we are talking of something which affects her directly.

Well, Sir, how stands this matter here in Massachusetts. There lies upon your table a report from the Secretary of State, showing that four hundred millions of the property of Massachusetts is invested in corporations! Many of them land corporations, which trade in real estate. I believe that the whole valuation of the State is only about six hundred millions of dollars. Four hundred millions out of six hundred millions—two-thirds of the property in the whole State—are already invested in incorporations! Well, if we have indeed come to that, then let us form a corporation of the whole Commonwealth in a lump, and be done with it. Let us have a joint stock corporation of Massachusetts, for we have almost come to that. I did not think it was as bad as that, until I saw that report from the secretary. I did not suppose that quite one-half of the valuation of Massachusetts had gone into incorporations. But it seems that in fact two-thirds of the whole of the property of the State is put into *mortmain* in these corporations—for this is the modern mode of locking up property in mortmain. Now, of this four hundred millions of dollars, put into this kind of mortmain, what proportion of it is real estate? I presume at least one-half of it is. And what is the result upon the women of the Commonwealth? The men have cheated every woman in this Commonwealth out of her dower in two hundred millions of dollars of real estate! That is the way men have plundered women by special legislation. And that is the subject to which I should like to see the gentleman in the gallery, (Mr. Whitney, of Boylston,) and other gentlemen who believe with him, direct their reforms. Here is a practical question, affecting the rights of women more deeply than any other upon which you can touch in this Commonwealth, for you have got two hundred millions of dollars of real estate of the Commonwealth put into corporations, and what do you provide in relation to it? You say that this two hundred millions of dollars of real estate shall be considered as personal estate, without the women having the right to say whether they will sign off their dower or not, and when the husband who owns in it, dies, it goes into the hands of the administrator, as personal estate, and is applied first, to pay the corporate debts, and then to pay his individual debts, and the widow can have no right of dower in it. There the widow and the orphan stand helpless.

I say that is legislative robbery, and you cannot defend it by any principle. You have herein violated that great principle of law which declares that laws are made, and communities are governed, by the consent of the governed; and you have violated another principle of common law, which provides that when a right of property is vested in an individual, you cannot by any law, divest him of that right, without compensation. Gentlemen get up here and argue earnestly upon the question of a change in respect to the government of Harvard College, and they cite the decision protecting charter rights, in the case of Dartmouth College, but when the question comes up as to the rights of the women of the land, when these landed and special corporations are granted to steal their dower, who says a word for them? You have gone on taking this landed property from women, and invested it in corporations, and deprived them of their right of dower in it, against the fundamental principle that you cannot deprive individuals of their private rights, without an equivalent.

Now, whether it is in the power of the legislature to redress this state of things, I do not undertake to say. That is a very great and important question. It is much easier, as we have already heard, to descend into the lower regions, than it is to get back, when once down in the abyss. I do not know what we can do as to the past, but I do know what we can do as to the future. Grant no more incorporations, special or general, that shall deprive woman of her dower! We are here as the representatives of women, and does any man mean to deprive his wife and children, his daughters who are growing up, and who, in the progress of life and society, are liable to become widows, of their right of dower? No, Sir, there is not one capable of saying or mean-

ing such a thing as that, directly, and yet, the people have sent legislatures here for seventy years, that have taken away from her in that period of special legislation, her thirds of almost one-third of the real estate of the Commonwealth of Massachusetts, and thus violated that great principle of the common law of England, that under no circumstances shall a woman be deprived of her right of dower. That is, of itself, reason enough for requiring general laws as to corporations, and for guarding against their operation in depriving woman of her dower in lands incorporated, or held in copartnership concerns.

[Here the President's hammer fell, under the order of the Convention limiting speeches to one half hour.]

Mr. SARGENT, of Cambridge. I suppose, Sir, that in this case, as in all others, we are first to consider and ascertain whether any evil has arisen under the present Constitution, and, having ascertained that fact, if we find such evil has arisen, we are then to determine what is the proper remedy.

The gentleman from Oxford, (Mr. De Witt,) this morning, if I understood his argument rightly, stated that a very large portion of the taxable property of the State, was now in the hands of corporate companies, and that, in 1840, it amounted to two-thirds the whole taxable property of the State. This, I understand that gentleman to assert, to be an evil. And he says it has grown up at the expense of the small towns. Sir, is that position correct? Is the position that this is an evil, burdensome upon the small towns, correct?

First, has it depreciated the property, or injuriously affected the interests of the inhabitants of the small towns? If it has not, then, in that point of view, the small towns have not suffered.

Again, when you apportion a tax throughout the Commonwealth, do you find that there is oppression of the small towns, growing out of this system? Do they not, on the other hand, find it a great relief? Is not their proportion of the taxes greatly diminished, by the increase in the property of the Commonwealth, which has accumulated under this system of corporations? If the answer be yes, then I hold that the argument of the gentleman from Oxford, altogether falls in this respect.

The gentleman for Wilbraham, (Mr. Hallett,) adduces, as another evil growing out of the present system, that it deprives the widow of her right of dower. Now, is that an evil which ought to be remedied? It may be an evil, so far as those acts of incorporation cover real estate, and convert it into personal property.

The gentleman proposes a general law, as the proper remedy. Now, will a general law remedy that evil? or will it remedy the evil complained of by the gentleman from Oxford? If, under special charters already granted, one-half, or two-thirds of the property of the Commonwealth is already covered, and, in that is included a large portion of real estate in which the widow is deprived of her right of dower, I ask you, if the remedy proposed, either in the Report of the Committee, or by the amendment of the gentleman from Oxford, is calculated to remedy or lessen that evil, and restore to the widow her right of dower. Will it not have directly the contrary effect. Will it not, by adopting a general law, open the door through which every acre of land in the Commonwealth *may* be brought under acts of incorporation, and thus deprive every female in Massachusetts, of her right of dower. I do not understand that either the gentleman from Oxford, (Mr. De Witt,) or the gentleman for Wilbraham, (Mr. Hallett,) propose to limit this right of incorporation; but, on the other hand, they propose to enlarge and extend it. If, then, it is an evil, as now limited under the proposed Constitution, I ask if that evil will not be increased just in proportion as you enlarge and extend the power?

I believe, I have always believed, that the interest of Massachusetts, in all her acts of incorporation, and, indeed, the very success of those corporations themselves, has depended, in a great degree, upon the fact, that the legislature held a wise controlling power over every special act they granted. And, I believe that the moment you yield up that wise controlling power over these corporations, you will place the interest of the Commonwealth in jeopardy, and just so far as you place the interests of the Commonwealth itself in jeopardy, to that extent you place the interests of all its citizens in jeopardy. I hold, then, that the remedy proposed, instead of removing the evil complained of, will increase it.

First, it is alleged that too much property is already vested in, and under the control of corporations; but this proposition will open the door for a larger amount to be vested in them, than under the present Constitution.

Second, it is alleged, that under the present provisions of the Constitution and laws, the rights of the widow are taken away. Now, it seems to me, that by the proposition before us, the door is opened for every acre of land in Massachusetts, to be brought under acts of incorporation. I do not believe that such a thing would ever take place; but you will enlarge the amount of property vested in these corporations very much. I therefore think the measure which is

here proposed, will not remedy the evil, but rather increase it, and I hope it will not be adopted by the Convention.

Mr. FROTHINGHAM, of Charlestown. I am in favor, Sir, of the resolution now before the Convention, but not for the precise reasons which have been adduced, however much force there may be in those reasons, but for others which appear to me to be conclusive. Before I proceed, however, I desire to ask the President if the whole subject is under consideration?

The PRESIDENT. The amendment of the gentleman from Oxford, (Mr. De Witt,) opens the whole subject for discussion.

Mr. FROTHINGHAM. I understand, then, that as the matter is now before the Convention, if this proposition be adopted by the Convention, and approved by the people, they will then say to their agents in the legislature, that, in reference to the principle of granting acts of incorporation, it shall be done under a system of general legislation, whenever it is practicable, and not by means of special charters given by the legislature, which has been the policy heretofore acted upon to such a great extent in Massachusetts. I am in favor of laying that down as sound policy.

Now, Sir, say what we will in favor of the advantages of individual enterprise, the corporate principle is valued highly by business men. That is the practical fact, and there is no denying it. It is seen in all the various operations of business. It is seen here in this State, where it has been carried to such great lengths, and it is seen in every other State. Wherever the progress of things carries American principles and American enterprise, there is seen a tendency to adopt this corporate principle, this custom of association and organization of effort. And why? Because, at the bottom, in itself considered, it is a democratic principle. It is a simple way of getting together the means of men of small capital, and thereby combining and accomplishing objects which they otherwise could not accomplish. That is the principle of association in business matters. The tendency is, to carry this to a great extent. Pushed to its extreme point, it is communism, socialism, or what is generally understood by those terms. But here, as we have it in Massachusetts, and in all the States of this Union, it is nothing more than a principle by which men with small means can combine and accomplish those objects which they could not otherwise accomplish, but which would have to be left to the heavy capitalist.

Now, Sir, I am in favor of laying down this as the general policy of Massachusetts. Then, instead of being used only by those who succeed in making out a case, as it is called, before a committee of the legislature, or before the legislature itself, and in this way of being obtained as a privilege, that it should be open to all, as of right, under a system of general laws. This will take from the practice its monopoly feature, and substitute for it the just feature of equality; giving to all equal chances. What now is distributed as patronage, as matter of favor, political or otherwise, will then be at the option of all, as matter of right.

Such a policy will have to commend it the consideration that it will be in accordance with that internal freedom of action which has done so much for Massachusetts, and for the country; and it will also be carrying out the legitimate functions of government. It is not the true province of the latter to meddle with, or control private interests, to act as their director and guardian, and exercise a paternal care over them. It has even proved itself a poor regulator of the pursuits of business. Interest is sharp enough to look out for itself, and all experience has shown, that when government travels out of its province to become the ruler instead of the agent of the people, it has mistaken its office.

Now, it has been this individual freedom of action, which has contributed so much to promote the material prosperity of Massachusetts, and of the country. If there is any one thing more than another which has contributed to build us up in this State, it is that large measure of internal freedom as to trade, as to manufactures, as to commerce, and as to all the industrial pursuits of life, which the people of Massachusetts have exercised to a very large extent. This remark will be found to be true, notwithstanding the restrictions which, in our early history, were placed upon business. It is said by legal gentlemen who have looked into the early laws of our colony, that the people here were at least one hundred and fifty years ahead of all the world besides, in relation to penal laws, and the same thing is true also in relation to business laws. Now, I know what may be said in answer to this. I know it may come up in the minds of many, as this remark is made, that there will be found upon the pages of our statute books ridiculous provisions of law for regulating business. But the true point is, not what there was in Massachusetts alone, but what elsewhere was customary at that day; what, for instance, there was in the old country, at the time our trade and commerce first begun. If the state of things over the other side of the Atlantic at that time, be examined, it will be seen what were the rules and regulations and restrictions imposed by the governments of the old world, upon all the trades and avocations of life. The paternal sys-

tem then and there, was in full operation. It will be found that the great end and object almost, of those governments, in their assumptions, were to regulate, restrict, and control the business operations of individuals. It was assumed, with respect to the farmer, the mechanic, and the laborer, that they had not sufficient intelligence or business faculty to take care of themselves, but that they needed to be cared for, like so many children, as to all the minute relations of life. It was held, that such care was necessary for the common good, for the safety and even existence of society. This was, in brief, the doctrine of hereditary legislators and rulers, who claimed the divine right to rule the rest of mankind, and to extort monstrous sums for their services. And they exercised this right freely. There was not a business pursuit in the mother country at the time Massachusetts was settled, that was not absurdly and wantonly regulated. There was not an article that could be used on the table, or on the person, or on the farm, or in the workshop, that either was not the subject of some monstrous monopoly, or some absurd restriction, as to manufacture and sale, and all were fortified by penalties. And this was carried, too, into regulations as to laborers' meat, and drink, and wages.

Now, Mr. President, it was under such a state of circumstances, that the farmer, the mechanic, and the trader, commenced here in Massachusetts. It was when monopoly and restrictions on trade were in their carnival, and, to judge the early people of this State rightly, this should be borne in mind. Another thing may be worthy of remark. When legal gentlemen praise the early penal legislation of Massachusetts, and when others, with equal justice, praise its business legislation, let the credit of the great and undoubted advance it all shows, be placed where it belongs. For two or three generations, the general court was composed solely of farmers, mechanics, traders, and laborers. Without intending to reflect on the great profession of the law, it may be well to remember, that for many years the people and laws too, would not allow a lawyer to be a member of the general court. Hence, it is to the common sense of these classes, that we owe the comparatively liberal legislation under which our infant manufactures thrived.

Very early in the history of our government, the general court, in the face of this old world restriction, passed one short act, if I remember rightly—and I think I remember the whole of it—saying exactly what it is now asked should be put into our Constitution. I cannot speak with precision, as to the exact words, for I have no brief or notes before me, not expecting to speak upon this subject; but it was about 1640, or thereabouts, the general court of Massachusetts passed an act, in which it was ordered that there shall no monopoly exist amongst us, except as to authors of inventions, and to them only for a short time. That was the whole of the act. And, from that day to this, there has been a constant tendency, upon the part of the business of Massachusetts, to relieve itself from those absurd restrictions, which were, from time to time, imposed upon it, and which were derived from the mother country.

Now, Sir, I am in favor of carrying out the idea, that here, in Massachusetts, there shall be no monopoly amongst us, in relation to corporate rights. I am in favor of saying, that, whatever advantages there may be in them, they shall not be confined to those who now enjoy them, but that they shall be enjoyed by all who choose to take advantage of them—thereby taking the matter out of the category of privilege, and putting it upon the ground of right.

But, Sir, we have tried the experiment, to some extent, here in Massachusetts. I think there are, upon your statute books, general laws in relation to the incorporation of lyceums, cemeteries, and other objects of association. I do not know in how many cases the system of general legislation has been applied. Take, for instance, one of the late acts passed by the legislature, by which any individual may go to a probate court and have his name changed, whereas, it used to be necessary for every individual who wanted to change his name, to apply to the legislature for that purpose.

Then there is another general law in relation to closing the concerns of corporations. I do not believe there is but one opinion about the wisdom, the safety, and the soundness of that law. It is a short act, but it provides that, when a corporation closes up its proceedings it shall pursue a certain course, by application to the supreme court. That is about the extent to which this system of legislation has been carried in Massachusetts. But, look at the neighboring State of Connecticut. Look at New York—look at Michigan—look at nearly all the Western States, and it will be found that general laws have been applied to nearly every kind of business concerns.

Now, if I understand the objections to this principle, they all centre in about this: that it is the duty of the government to see that unworthy individuals do not receive from the legislature power to cheat other individuals. I believe that is the whole objection—the whole ground of hesitation—upon the part of those gentlemen who oppose the adoption of this resolution. They

say, that if you allow any set of individuals, for any purpose whatever, to form themselves into corporations under general laws, that it will open the doors to enormous frauds and cheats, which it is the duty of the legislature to prevent. I admit it is the duty of the legislature to make these general laws so sound, so safe, and so secure, to the property that invests itself under them, that this fraud, as much as possible, may be prevented; and farther than that, it does not seem to me that it is the duty of the legislature to go. When it goes beyond that, it steps into that round of paternal legislation which has been the curse of commerce for ages. I undertake to say, that it is not the duty of the legislature to take care of the private interests of men, but only to furnish those sound, safe, and general rules, by which they may conduct their business. It is for this reason, therefore, and not for other good reasons that have been alleged, that I am in favor of extending this principle of legislation, and of inserting in our Constitution a short and simple rule or instruction to our agent, the legislature, to this effect: wherever it can be done, the legislature shall make those general laws, and cease granting special privileges.

Mr. SCHOULER, of Boston. I have only a few words to say in regard to this matter. This subject has been discussed in this hall, in days gone by, with great ability, but I have never become a convert to these general corporation acts. I am not quite so much a corporation man as to give every set of men who may combine together the right to form themselves into a corporation. I think it is the duty of the legislature, to investigate all applications for corporations; and, if the applicants make out a case, to give them their charter. But, to pass a general law whereby any persons may combine—Tom, Dick, and Harry—and form themselves into a corporation, and go into any kind of business, I think ought not to be tolerated. The gentleman for Wilbraham, (Mr. Hallett,) and the gentleman from Charlestown, (Mr. Frothingham,) have spoken against this idea of encouraging associated wealth. They are in favor of having everything done, that can be done, by individual corporations, and so am I. It is because I am in favor of individuals doing all the work that can be done, that I am opposed to passing a general corporation act, whereby any persons may form themselves into corporations. We have a certain kind of business in this State, that has never been transacted by corporations, and that is, the great trade of manufacturing shoes. The shoe and leather business in this State, has never been transacted by corporations, and I trust it never will be. The great work of building ships has never been in the hands of corporations, and, if persons should come up to the legislature and ask for an act of incorporation for that purpose, they would not get it, upon the principle that this business, as has been shown, can be done by private enterprise; and whenever this can be done, I say there let it remain. I ask the gentleman from Charlestown, (Mr. Frothingham,) and also the gentleman for Wilbraham, (Mr. Hallett,) supposing that men form themselves into corporations under this general corporation act, and it is found out afterwards that they do not transact their business properly, you cannot take away from them their charter. They are independent of the legislature and the people. You cannot stop them, unless you repeal the general act; and when you do that, you punish the innocent with the guilty, because there may be a hundred other corporations incorporated under this general corporation act. It may be said that we may pass a special law in regard to men associated together under general a law, if they transcend the power of that general law. But, supposing we do, what is to hinder those men, the next day, from forming a corporation under this general law. Last year, we had an application here to the legislature, to form a company by the name of the Worcester Caloric Power Company. They were to have $500,000 capital, and it appeared in the bill, if I recollect aright, that they were to hold real estate in the city of Worcester to the amount of $400,000. It was well known that it was nothing but a land speculation, got up under this title, intended to create the impression that it was intended for mechanical purposes. This is what gentlemen might call mortmain, although this definition of mortmain is a little different from the original definition. But, when that came to be discussed before the House of Representatives, they killed it by a decisive vote. I do not know but what they may have forced themselves, under general laws, into the Worcester Caloric Company. What you can stop by legislative enactment and investigation, they can obtain under general laws. The gentleman for Wilbraham, (Mr. Hallett,) says the amount of property owned by corporations, amounts to four hundred millions, and yet he is the advocate of a system, by which you can put the whole mechanical, and other business of the Commonwealth, into corporations. He talks about corporations owning this great amount of property, and yet he advocates a law whereby they can hold the whole State, and the legislature cannot say no. And they will be independent of the people and the legislature. I am not such a corporation man as that.

Mr. HALLETT, for Wilbraham. Will the gentleman allow me to ask him one question. If four hundred millions of property have gone into corporations, I should like to ask him what right he has to exclude the other two millions from going into corporations also.

Mr. SCHOULER. If the gentleman comes before the legislature and makes out a good case for an act of incorporation, he will get it. I was reminded, while the gentleman was speaking about monopolies, that if there is anything like a monopoly, it is the profession which the gentleman himself follows. Why does not the gentleman go for incorporating into the Constitution a provision that every-body should be a lawyer, and that he shall not have to serve three years, and then be examined before a certain legal tribunal, to see if he is fit to exercise the duties of the profession.

Mr. HALLETT. If the gentleman will incorporate a provision into the Constitution that would make lawyers, I would be very willing to do it.

Mr. SCHOULER. I believe that lawyers can be made about as easily as anything else.

Mr. HALLETT. I wish barely to make one statement. I wish to say, under a law in our Constitution, that that gentleman, or any citizen may be admitted for an examination to the bar to-morrow, if he possesses good moral character and general information.

Mr. SCHOULER. Suppose he should not be able to pass an examination. What would be the case then? But, to pass from this, I say that that profession is the only profession in this whole Commonwealth that approaches anything like monopoly; and I have noticed in the Revised Statutes, that they have a lien law whereby they can keep the money of their clients, and pay themselves, before they pay over to their clients the money which they may collect for them. I say, if you pass this general law, you make all the corporations in existence monopolies, and you are shutting down the gate in such a manner, that these corporations will stand without any rivals and without any competition. They have got their charters, there they will remain, and the Commonwealth will grant no more. I desire to know if this Convention is ready to assert and maintain such a doctrine. I desire to know if we are intending to pass a law which will give to the banks that have been incorporated within the last two years, and those which have had their charters renewed, the whole monopoly of banking in the Commonwealth for the next twenty-five years. The gentleman says that all the new banks can come under the general banking law. The people do not want it. It is well known, at least financiers tell me so, that the banks under the general banking law cannot compete with those under special charters. Last year, or the year before, the legislature amended the law, by saying, that those banks that went into operation under the general law, should not pay any taxes for it. They offered this as an inducement, but you cannot find any company in Massachusetts that would avail themselves of this advantage. So it was in regard to the general corporation act for manufacturing, which was passed two years ago. There are a very few, I believe, that have availed themselves of these privileges; merely enough to make exceptions to the rule. As a general thing, the people of Massachusetts are not in favor of that law. I judge so from the fact that persons have come up to the legislature to get their charters, entirely disregarding the general corporation act. These are the general reasons why I am opposed to placing in our Constitution this provision, although other States may have passed, as we all know, general corporation acts, still, I believe our system is better than any which has been adopted anywhere else; and, I think all the time expended in legislating upon and investigating this matter of incorporations, is time well spent. I would warn this Convention against incorporating a provision into our Constitution which will give to irresponsible persons the power of forming themselves into corporations, and in that way getting rid of individual responsibility for their debts. The gentleman from Charlestown (Mr. Frothingham) is an anti-corporation man. I recollect that, in 1844, when we had that long debate about the camels, down in Nantucket, that the gentleman from Charlestown was very earnest in his opposition to all kinds of corporations at that time, and particularly against those small corporations. He has changed his ground altogether. He is now in favor of every-body forming themselves into corporations, and of throwing the whole business of the Commonwealth into the power of citizens who form themselves into corporations, and of placing them above the people, and the representatives of the people.

Mr. FROTHINGHAM. The gentleman very truly says, that in some year, before the legislature, I had the honor of making an argument against granting special acts of incorporation. I have now very feebly made an argument against such special acts. I am in favor of granting now to all, those privileges which so large a body of our fellow-citizens have.

Mr. SCHOULER. The gentleman's explanation amounts to this, that he was opposed to that

camel corporation, because it was a special corporation. I understood his argument to be, and I believe it was always so argued on that side, that corporations of that kind were unnecessary, and I wish to know whether the gentleman would be in favor of the camel corporation, if it was incorporated under the general law. What difference is there in principle, between a special and general act? If a corporation is good, it is good by a special act. There are certain kinds of corporations that require a great deal of capital and associated wealth, in order to carry on their business, and it is necessary that they should have an act of incorporation; but, before that grant is given, I would have every one of them come up here before the representatives of the people, and make out a full and clear case, before an act of incorporation should be given them.

Mr. WALKER, of North Brookfield. This question is one of great interest in this Commonwealth; it is peculiarly a Massachusetts question, because no other State in the Union, and I suppose no other country in the world, has so many incorporated industrial institutions as the State of Massachusetts, or so much wealth embarked in enterprises of a corporate character; and, therefore, the question is one of very great importance. In most other states and countries, corporations are resorted to as a necessity; with us they are mostly used as a matter of convenience. No one will pretend that nine-tenths of all the projects now carried on by corporations, could not be carried on by individuals. I think the gentleman from Boston, the other day, told us that one private firm in England owned more spindles than there are in the city of Lowell. Probably the founders of that establishment were poor men in the beginning, and that they attracted to themselves, by a necessary law, all the capital they needed, because they were men of character and ability. Such persons always attract to themselves all the capital they require; because capital needs talent and skill, as much as talent and skill need capital. From the statistics contained in our document, No. 37, the best deductions we can make, I think, will show that something like $250,000,000, or $300,000,000 of capital in this Commonwealth, are locked up in corporations. That is about half of the wealth of the State.

I suppose it is a foregone conclusion, that Massachusetts is to try this experiment to its fullest extent, and that we are to illustrate what the advantages or disadvantages of corporations may be. Corporations now, with us, have the ascendency. I ask any man to say, if he believes that any measure of legislation could be carried in this State, which was generally offensive to the corporations of the Commonwealth? It is very rarely the case that we do not have a majority in the legislature, who are either presidents, directors, or stockholders in incorporated companies. This is a fact of very grave importance.

Mr. SARGENT, of Cambridge. I would like, with permission, to ask the gentleman from North Brookfield, if the secret ballot law was carried by the influence of corporations in this Commonwealth.

Mr. WALKER. I have reason to think that the corporations did not have a chance to rally and combine their forces on that question, either for or against it.

Now, if it be a foregone conclusion—if this corporation principle is to be carried out to its full and legitimate result, as I fully believe it is in Massachusetts, then I am decidedly in favor of the resolution before us. I think that is a resolution which we ought to pass. I will give an anecdote, in illustration of the reason why I am in favor of it. In 1850, certain tailors of the city of Boston, I think to the number of twenty or thirty, came before the legislature, and asked to be incorporated, that they might have an opportunity to put their small capitals together, and unite in the manufacture and sale of clothing. They came before the legislature, and it was shown that they were honest, industrious, and deserving men. I think their united capital amounted to only fifteen thousand dollars. What answer did they receive to their application? They got a negative. "You cannot be incorporated," said the legislature. At that very moment, there was a project before the same body, to increase the capital of a corporation, already amounting to two millions, to three millions. That was granted; that was worthy the attention of the law-makers of Massachusetts. That petition came from great capitalists. Laborers came forward and asked to be incorporated, and it could not be done. They were men of no influence, comparatively, and they could not have the privilege of uniting their capital together, so as to increase the benefits of their own industry, and obtain a profit on the sale of their own products.

Now, Sir, for one, I must, before voting on this subject, say, that if this policy is to be pursued, if this grand corporation system is to be continued, I think it should be extended to all, so that all may participate in it equally, and the privilege of incorporation should not be a matter of favor, but of general right. I have great doubts as to the expediency of creating these business corporations, either by general or special laws. I do not believe in the utility or rightfulness of the system itself; I do not believe in the necessity for it, as

suggested by the gentleman from Charlestown, (Mr. Frothingham). I think there is no force in his argument, because we have had, for many years, an act for general copartnership, by which all persons of small means may unite together, and carry on business, and that without endangering anything more than the amount they put in. That law is neglected, because the whole attention is turned towards corporations. Yet the law was a good one. It was amended in 1851, and made still better, so that now men may unite in carrying on business, with all the facilities they would derive from incorporations. Under our present law, business men have the advantages which result from the combination of capital, and of acting with others without endangering anything more than they invest in the concern. Besides, for the largest manufacturing operations, it is evident corporations are not necessary; for in the neighboring State of Rhode Island, where manufacturing industry has been more profitable, in proportion to its extent, even than in Massachusetts, they have, as a general fact, no corporations.

Sufficient capital can always be obtained, without the aid of corporate powers and privileges, for all useful and profitable undertakings.

I have said that I object to the whole experiment. I do not believe that the final result of it will be beneficial. I wish it understood, however, that when I speak of corporations in this connection, I mean those of a business character. Corporations for other purposes—for railroads, banks, and insurance companies, public charities, and the like—are, if not in all cases a matter of necessity, are at least a great public convenience, and do not interfere with the general business and ordinary pursuits of the people of the Commonwealth; but, for all other purposes, I do object to them.

The first reason is, that corporations change the relation of man to wealth. When a man has his property in his own hands, and manages it himself, he is responsible for the manner in which he does it. He does not delegate his power over it to anybody else. But when the management of property is put into the hands of corporations, the many delegate the power of managing it to the few; and that is an important consideration, when we reflect that nearly half of the wealth in this State has passed from the hands of individuals into the hands of incorporated companies. It aggregates power, of course, and necessarily, all the property of the Commonwealth, included in these corporations, must be put into the hands of a very few men, having absolute power over it for the time being. Hence, the agent of a factory, or a corporation of any kind, has absolute control over all persons connected with that corporation. This, I hold, to be one of the bad consequences of incorporated wealth.

Another objection I have to this system is, that it changes the moral responsibility of capital. When a man is managing his own property, he is held morally responsible for the manner in which he conducts his business, and for the manner in which he treats the persons whom he employs. If he is unjust, or cruel, he will feel the rebuke of an indignant public sentiment, under which he will quail. But it is not so in corporations. All this moral responsibility is removed. I will illustrate my meaning in this manner: Suppose one of the employees, a young woman, in one of the factories, should feel that she was injured or wronged, by some of the arrangements of one of the mills, and she should seek redress. Suppose she goes to the overseer of the room and applies to him. What does he say? "I am not responsible; you must look to the superintendent of the mill." And what does the latter say? "I am not responsible for this; you must look to the agent of the factory." Suppose she should venture to go to the agent. What does he say? If he deigns to say anything, he will tell her that "the board of directors are responsible for all this matter." The board! and so the poor girl has, at least, run her head against "a board." "We act," says the agent, "under general rules. These rules are established by the board of directors, and the agent has no responsibility in the case." Then what is her redress? If she goes to the directors, what answer does she get? Why, that they "act for the stockholders, and are bound to consult their interests, and those interests require them to run the factory thirteen or fourteen hours per day. They must act for the interest of the corporation." Suppose, farther, that an application for redress were made to individual stockholders, what would be their reply. Very certainly they would say: "We have no personal responsibility in the matter; we submit the entire management of the factory to our directors and those they employ." This is a fair illustration of the matter, and it clearly shows that the moral responsibility of wealth is destroyed by being aggregated into corporations, of which it is said, with terrible truthfulness, that "they have no souls."

In the next place, corporations destroy the natural relation between capital and labor. The moment we incorporate capital, and refuse to incorporate labor, that moment we change the relative position of the two. And what is the consequence? We give capital greatly

the advantage. We never incorporate laborers. Such a thing is unheard of, and such a thing would not be tolerated. And, since we do not do that, it is quite clear that we should not incorporate capital, if we would leave the two parties on an equal footing. Capital and labor are, in all cases, natural copartners in production, and natural competitors for profits. The relation between capital and labor we cannot destroy, but that competition we may interfere with, and we do so if we incorporate capital and do not give an equal advantage to labor.

Again, by this system we reduce the number of freeholders, and that, I maintain, is a great evil. When persons carry on their own business, they will live, generally, in their own houses. When they are employed by corporations, almost universally, they are tenants at will. I submit, that in this Commonwealth, this has become a matter of great importance. Thousands, and tens of thousands, who are now mere tenants, would be freeholders, were it not for corporations. For instance, take one of our manufacturing cities, where the business is carried on by corporations, and what a large proportion of all the dwellings are owned by these great companies, and what a large part of all the inhabitants hold their tenements at the will of a factory agent. On the other hand, by way of contrast, take the city of Worcester; it has not a single corporation there for any industrial purpose, and yet it is the most flourishing city in this Commonwealth, altogether.

Mr. SCHOULER. I would like to ask the gentleman from North Brookfield, if the city of Worcester has not been built up by corporations, and what it would be to-day, if it had not been for railroad corporations?

Mr. WALKER. I have not objected to railroad corporations.

Mr. SCHOULER. The gentleman spoke of corporations.

Mr. WALKER. But I have not objected to railroad companies, banking, or insurance companies. The only point of which I am speaking, and the only thing to which I object is, the establishment of corporations for carrying on the common industrial business of the country. Now, take the city of Worcester, and, as I have said, it is far the most flourishing city in the Commonwealth; and the great cause of their success and prosperity is, that they have mechanics who do business on their own account, and who, when they acquire wealth, buy a piece of land and build a house upon it. They are independent men, and act as they choose, and vote as they please.

On the other hand, take a city whose industry is carried on by corporations, and how different is the position and characteristics of its population. I will make no invidious comparisons, for the facts are well known to all intelligent persons.

Again, Sir, this system has concentrated our manufacturing business, to a wonderful extent, in the cities, and I insist that that is a great evil. I maintain that, if it had not been for this corporation system, our manufactures would not have been concentrated to the extent they have, in cities, but would have been scattered all over the State, wherever there was a waterfall to be put to use; and that would have been much better for the Commonwealth, than the present state of things. One great object of bringing these great corporations together in a large city, is this: In the first place, when one of these cities is to be built, the land is all bought up, and monopolized. One single corporation in this Commonwealth, purchased 1,400 acres of land to start with, and now, if that land is sold at only ten cents a foot—and much of it will be sold for a dollar a foot—it will bring more than six millions of dollars. Now, Sir, all the rise of that land, instead of going to the benefit of the workmen, as it should, goes to build up the property of the corporation. That, I maintain, is a serious objection, and one that does not exist where manufactories grow up naturally under private enterprise.

And, I object, again, that this system necessarily destroys private enterprise, by monopolizing the money and business of the country. Every-body knows, that the moment there is a great pressure in the money market, these corporations can control a great part of all the capital of both city and country, and I have been rejoiced, when passing through Pearl and State Streets, in this city, in a time of pressure in the money market, to find that the business men were beginning to wake up to the fact that they are being crushed under this tremendous system of monopoly.

Ordinary business men cannot command money, when corporations can. For, in the first place, the men who enter into these corporations are men of great capital, and have great personal influence in the money market; and, in the second place, as they can create the influence of great manufacturing and banking corporations, they can and do, readily absorb a great part of all the circulating medium of the State. Business men begin to understand all this, and to see that private enterprise is greatly crippled and impeded by this corporation system. Public sentiment, among that class of men, is becoming adverse to it, and will demand, ere long, its overthrow. They will not, and ought not, to be willing

always to compete with these vast aggregations of wealth.

Another objection is, that this system involves, to some extent, the evils of absenteeism, of which we have heard so much in other countries. Is it not, to a wonderful extent, the case that those who own the wealth in the manufacturing towns, do not live in these towns? Are there not millions, and tens of millions—I do not know but that I may say hundreds of millions of property—owned in towns in which the owners do not live. This is certainly the case; and what is the consequence?

Mr. HALE, of Bridgewater. I wish to inquire if there is any injury resulting to these towns, because persons who do not live there, have invested their money there?

Mr. WALKER. It operates greatly to the injury of these towns, that the profits of capital are all expended out of them, just as it does in Ireland. The great curse in Ireland is, that those who make their money out of the industry of that country, spend it in England, on the continent, or wherever else they please; and consequently Ireland does not improve and prosper, as it should. That is the effect in these towns, they do not have their legitimate growth and development; it is so everywhere. I do not think this is so strong an objection as some that may be urged, but still it is an objection, and it is one that will be felt more, years hence, than it is now. I will remark, Sir, that the effects of our corporate system are not very fully developed, as yet—we are only on the threshold—we have only the poetry of it now, but we shall have the prose—we shall have sad results from this system ultimately.

This system of corporations is nothing more nor less than a moneyed feudalism; it has an effect on our civilization analogous to that which feudalism had in past ages. It concentrates vast masses of wealth, it places immense power in a few hands, and gives to both a permanent existence. Corporations never die. The individual manufacturer dies, his great property is divided. If he has been a bad man, there is a chance for hope that somebody else of a better character will take possession of his wealth, and that it will find investment in various channels of enterprise; but it is not so with corporations. What is sealed up there, is sealed up forever, like an hereditary entail.

But, Sir, time is precious, and I will not extend my remarks. This system will eventually work out its results; it will eventually fail—I have no doubt about it. I hope gentlemen will not feel any unnecessary alarm on account of my prediction, for I do not expect that it will be fulfilled in the present generation. But I am just as certain of it ultimately, as that I am now standing in this hall. The system must eventually break down, because, according to a simple law of political economy, individual enterprise will outstrip corporations. It is more economical, more vigilant, more shrewd. We have, by State legislation, built up very successfully a great system of corporations, and national legislation has fostered their interests, but, the time is coming when these institutions will be brought into a full and fair competition with unrestricted commercial and manufacturing industry, throughout the world, and that competition these corporations cannot stand. They conduct their transactions in such an expensive manner, that it more than counteracts all the advantages of their special privileges.

There is a gentleman on this floor who could bear witness to the truth of this; he knows full well how enormous are the salaries of the various officers of these corporations, and how large a share of all the profits is swallowed up by them. In one case, he has stated that the salaries of a certain corporation in this neighborhood, and that in no wise a peculiar one, are equal, in the aggregate, to one cent per pound on all the cotton spun. The salary charges are immense. Five thousand dollars, perhaps, for the president, a corresponding salary for treasurer, agent, &c., &c., down through a long catalogue of officials; higher salaries than the Commonwealth can, or does afford to pay. These are the reasons why corporations cannot eventually compete with private industry. Their expenses are enormous, and the manner in which their business is conducted, is necessarily wasteful.

Although they are carried with us to the greatest possible perfection, still, even here, they are cumbrous and expensive in their employment of capital, and they will find it out before long, and then the stockholders will sell out to individuals; there will be no property destroyed—there will be no violent revolution—everything will gradually settle down quietly into its legitimate channel, into the hands of private individuals. I will end, as I begun, by saying that it seems to me that we had better make a general law that will provide for the case, as matters now stand in this Commonwealth.

Mr. GRAY, of Boston. I cannot see any necessity or propriety in inserting either the resolve in its original shape, or as it is proposed to be amended, into the Constitution. Yesterday—and I refer to the decision by the way of illustration, for I have no disposition to reflect upon it, and it would not be in order for me to do so

—yesterday, in judging whether the legislature should be prohibited from loaning the credit of the State, the Convention decided that it was certainly a very high power to give to the legislature, being no less than the control of the whole property of every man in the State. But, after all, it should be intrusted to the hands of the agents or servants of the people, and without restrictions; but I will say, Sir, that I was against the restriction proposed yesterday, and I wished that the resolve could have arrived to its third reading, chiefly, though not solely, with the hope that some amendment might be proposed, which should forbid towns to exercise a like control; but that is not exactly to the point here. It is unnecessary for me to say whether I think that the plan of a general framework established by a general law, is the best plan, or not the best plan; it is unnecessary for me, either to take issue with my colleague, or to agree with him as to that matter, because, Sir, I go behind all that. Why, Sir, admitting, if you please, that the plan of granting special acts of incorporation is wrong, and that we should make a general law by which people could come in and make corporations for themselves, why not leave it in the hands of the legislature? The legislature have shown themselves entitled to the confidence of some gentlemen who have spoken before me, in establishing that system; and why should we not be willing to let things stand as they do? Why should we tie up their hands while the experiment is in process? Now, Sir, as to granting special acts for corporations, we are told that millions of property is in the hands of corporations, and of its effect upon the labor of the community, and the personal relations of men. Whatever results from corporations, results from anything that is a corporation, whether individuals make it themselves, under a general law, or the general court makes it for them, by a special act. I will take occasion here, to say, that I have always acted upon one rule—and I humbly think it is a good one, after much reflection, and some opportunities of observation—and that is, to be very liberal in granting charters of incorporation, but very careful in reserving control over those charters; and that has been the policy of the legislature of late years. The 44th chapter of the Revised Statutes gave the legislature power over all charters. I do not wish to disturb that, for my part; and if gentlemen wish to stereotype it in the Constitution, I do not think that I should have any objection—certainly, none strikes me now. I think more especially should some such provision be made in reference to municipal corporations; for, a little while ago, the charter of the city of Lynn came very near slipping through, without any such effectual provision, and upon a different footing from all the other city charters in the Commonwealth.

I come back, after all, to a repetition of my first reason, that the matter had better be left to the general court. One or two years since, they thought it would be best to pass general acts. The legislature have done this, and they will persevere in it, unless the wants and interests of the people require otherwise. I am by no means prepared to say, that general acts—everything, of course, depends upon what their provisions are—will be the best, the most convenient, and the most proper way of proceeding, in regard to this matter. I have full confidence in the wisdom of the legislature, that they will be quite as good judges as I am. As to the general effect of corporations, all that I have to say is, that if the property of the State is locked up in their hands, the legislature keeps the key, and I presume always will keep it; and I have no objection that it should be so; but, I think that we may safely leave the matter as it stands in the Constitution. We should probably have no greater evils than we have had; and, if any new evils should appear from leaving the legislature its present license, I think the people will do what is necessary to restrict them. If that should be so, and if some future exigency should arise so as to require their action, I would not tie up their hands either way upon the subject irrevocably.

Mr. WHITNEY, of Conway. I know, Sir, that the Convention are impatient to take the question. I am fully aware that there is running through this Convention a strong desire upon the part of many members, to limit our discussions, so that we may act, as soon as possible, upon the questions which yet remain to be acted upon by this body; but I desire to say a few words, and I think that I have special claims in this particular case for a few moments of your time, before final action is taken upon this question. I had the honor to be upon the Committee who reported the original resolution, out of which the amendment, now under discussion, has grown, and I regard this subject as one of the most important subjects that can come before this Convention. I do not agree with those gentlemen who say that our system in Massachusetts, hitherto, has been a perfect system, although it has produced some very good results. The gentleman from Boston, on my right, (Mr. Schouler,) and the one before me, (Mr. Gray,) say that the legislature, in granting special acts of incorporation, has been careful to investigate the cases, and to keep the control of these companies. I grant that; but would it have

been otherwise under a general law? The gentleman on my right says, that under a general law, any special breach of that general act by a particular corporation, would necessitate a repeal of the general law. If that gentleman had reflected with his usual sagacity and judgment, he has too much good sense not to know better than to have made such an allegation here. The gentleman knows, full well, that the legislature can pass a general remedial or penal law, applicable to corporations as well as to individuals. A general law can be passed, by which, if companies violate their charters in any single particular, either by working more hours in a day than your law provides for, or in any other way,—by any breach of right, justice, or law,—the corporation can be made indictable, and punished, by taking away their charter; or, by punishment of their directors and stockholders, they can be made amenable. If the gentleman had reflected for a moment, he would have seen that his objection was groundless. I would ask gentlemen here, to bring this matter home, and see what we have here in hand. The gentleman from North Brookfield, (Mr. Walker,) has argued the general doctrine of corporations. I will agree with him in the main; but that is not the question here, before the Convention. I take it for granted, that the advantages growing out of associations under the form of corporations, are such, that the system is to be continued, to some extent, in this Commonwealth, under one form and mode of making laws, or another; and now, the question is, to what extent it shall be continued, and how? whether by a system of special acts, or by general laws? not whether you will apply all the principles of corporate action, by a general law, to mechanics, and tavern-keepers; but, in what manner shall it be applied, in all cases, where its application is proper? Shall the legislature assume to deal out these acts to a few of our citizens, as special favors, when they belong, according to all the principles of your original Constitution, and according to all the principles of justice, to the whole people of the Commonwealth, as a right? I undertake to say, that gentlemen have not met the issue here. It is not what the general law shall be; but, whether there shall be a general law, open and accessible to every citizen of the Commonwealth alike?—whether it shall be, in the language of the declaration of your Constitution, in article ten, of the Bill of Rights, which says that, "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?" Now, Sir, this is a property question. The question is, whether all the citizens of the Commonwealth shall have the same rights and privileges to associate together for the purpose of acquiring property? And I undertake to say that you violate the principles of equality, and right, and justice, and the declaration of the present Constitution, as much in denying me the right to associate with my fellow, under a general law for the advantages of corporate action, as though in a case where my life, or my liberty, was concerned. You should not deny me the same right of trial which you give to other citizens. I claim, that whatever right you grant to any other man to acquire property, either by a special charter or by a general law, you should grant me a like privilege, and a like opportunity. That, Mr. President, is the question before us.

I took down some of the remarks of the gentleman this morning, with a view to reply to them, and if the Convention will indulge me for a moment, I will briefly refer to them. The gentleman from Boston who first spoke, says that this proposition favors corporations. That may, or may not be so. It depends upon the general law that you may make. If it favors corporations, with proper and suitable restrictions, I am in favor of it; for I take issue with gentlemen who say that corporations are necessarily monopolies. They are only monopolies inasmuch as you make them exclusive. They are monopolies under your system of special charters; but, open them to every citizen, and they cease to be monopolies. A monopoly is to give to a man the control of the manufacture of any particular article, or to give to him exclusively a market for the sale of any particular thing; which privilege you deny to other men. In this exclusive privilege consists the monopoly. Now, if this leads to the increase of corporations, properly constituted and guarded, and so created that they shall not interfere with individual rights, or the rights of towns of this Commonwealth, then I go for the creation of such corporations. Every gentleman is aware, that in the neighboring States, the people are engaged in diversified and prospering manufactures, built up under a self-associating system of general corporation laws, which have greatly promoted the wealth of the citizens of those States, individually, and in contributing to their individual wealth, has contributed to the aggregate wealth of these several States; while in Massashusetts, we have trampled down enterprise, by the delays and fluctuations of our legislation, sometimes denying charters, and sometimes granting them with great liberality, while other States have left their citizens free to incorporate themselves. Look at the State of Connecticut, for example; and, notwitstanding our Lowell, and Salem, and other large manu-

facturing towns, the fact appears that they manufacture more on the head, in regard to population, than we do, with all our privileged corporations—I believe largely more. Sir, they have gone into every kind of manufacture, from the very smallest pin, and hook and eye, to the fabrics themselves which these little articles are used to fasten. The State of Connecticut is dotted all over with manufactories, which have grown up under the general law of incorporations in that State, which has never worked any evil to anybody. Half a dozen men can make themselves into a corporation there, and go to work any day. But how is it here? If half a dozen men want to go to work to-morrow to manufacture pins and needles, they have to wait until next January, and then they have to come to this House and satisfy the legislature that they have a kind of claim to enter into this sort of business. Sir, who can truly and reasonably say, that the legislature, as a body, are better judges of what individuals can do for their own profit and advantage, than the individuals are themselves? Who would take the opinion of the legislature, in regard to a piece of paper which he wanted to get discounted at a bank? Such a system of law, Sir, is not founded either on equity or common sense. It is good for nothing. I know well enough how charters are obtained here. We all know that our legislative opinion and action is variable on this subject. Some legislatures are in favor of almost all incorporations, and freely grant special charters, while other legislatures withhold acts of incorporation altogether. But, let me go back a moment to the manufacture of needles. If I was in the State of Connecticut, or New York, or Ohio, or in two-thirds of the States of this Union, I could go to the capitalist, if I was a mechanic, and understood how to make these needles, and could associate with him, putting in my hundred dollars, and my skill, and he, perhaps, his thousand dollars, and we could start a manufacturing establishment to-morrow. How is it here? Why, Sir, as I before said, we must wait until January next, and then we must come up here by a lawyer, and go before a committee of the legislature. We must first satisfy them that it is a good enterprise. We must fee a lawyer at a nameless amount—sometimes more, and sometimes less—to present the case before your committee. If we happen to meet with a man desiring a like privilege, for the manufacture of some other article, why we may join him, and drive a bargain together, with some members of the legislature, the friends of one measure joining the friends of the other to insure the passage of both, and possibly by the end of next March, we may get our charter granted. But, Sir, if I was a party concerned, and knew the business, and wanted to make money speedily, I could slip into Connecticut and start a manufactory, and become well established, while other parties were hanging on here in the endeavor to obtain a charter.

Mr. SCHOULER. I would ask the gentleman from Conway, if he is not aware, that we have a general law in the State of Massachusetts, in regard to corporations.

Mr. WHITNEY. Yes, Sir, we have a law, and it is a general law, and the gentleman will find that there are nearly fifty corporations organized under that law; and, if you go into the interior towns of the Commonwealth, you will find that they are doing a successful business under that law. I grant that; but they come here, and ask for special charters, he says, notwithstanding, and for what purpose? Why, in order that they may dodge the wholesome provisions of that law. That law requires that the name of every stockholder in a corporation, shall be entered in the books of the town clerk, where the corporation exists, in order that it may be known whether the corporators are solid men, or men of straw. It is also necessary, that when any transfer of stock is made, such transfer should be entered in a similar manner, in order that the public may not be cheated. And now, Sir, that law is in successful operation, and nearly fifty small manufacturing establishments are in operation under it. Possibly some eight or ten of them, have since incorporated under special charters. A gentleman from Springfield, told me, a day or two ago, and he is a large holder in corporations, and knows pretty well how the thing works. He told me, that while he favored a general law, on the ground that it was better for all, and more equal yet, there were sometimes peculiar advantages in having a special charter. As an instance of this, he mentioned, that being desirous of forming a steamboat company in Connecticut, instead of organizing it under the general law, he happened to find an old special charter, and had the company organized under it, simply because it was less restrictive, and attended with less trouble, and the charter was more liberal than the general law. Nevertheless, said he, the general law would have answered all our purposes, and we should have organized under it, had we not found this old special charter.

The main objection I have to these special charters is, that they interfere with private enterprise, whereas, a general law places all upon the same level. There is no fear of getting a general law, that will interfere with private enterprise, half as

much as your special laws will do, because, in passing a general law, it is brought to bear upon every member of the legislature. A general law affects the whole community; and, as it is good or bad, so each member must answer to his constituents, according to his vote. But, when a member gives his vote in favor of a special law, which is but of limited application, his constituents probably know nothing about it, and, if they did, they might not care about it, unless they were particularly interested themselves. In such case, a vote costs a member nothing; and, as the gentleman from Taunton said, the other day, every-body knows that there is a predisposition in the human heart to accommodate a neighbor, when a man can do it so easily and cheaply as by giving a vote that will not bring himself into conflict with others. But, in case of a general law, applicable throughout the Commonwealth, and to bear upon all parties and all sections of the Commonwealth equally, it would be matter of general concernment, and men would bring their minds to bear upon it, and hence it would, in all probability, be the best law that could be framed.

The gentleman says, that those parties desiring charters, should come before the legislature and make out a case, before they should obtain one. I take issue with the gentleman there. There is in my town a cutlery establishment, which was founded last year under our general law, and it was formed by mechanics and artisans; men who were at work for a wealthy individual; and they came up here and petitioned to be incorporated in a town on the eastern side of the Connecticut River, but they failed to obtain their charter. Why did they fail? Because, they were poor mechanics, and could not reach those higher sources of influence. They did not obtain their special charter; but, since the general law was enacted, extending the right to individuals to self-incorporate, whether possessed of much or little property, these men came together and put in the little money which they had, and became stockholders in that corporation, and are now doing a good business, manufacturing, so far as I can learn, the best cutlery that is made in the State of Massachusetts. Now, Sir, I undertake to say, that these men should have that right; that you should not grant to the wealthy capitalist a special privilege of corporate action, and deny to the laborer the right to associate with his fellow laborer, under a general law.

Something has been said, in the course of this debate, by gentlemen who spoke when the subject was under consideration the other day, about the danger of arraying corporate wealth against your amended Constitution. I wish to allude to this, in passing, as I thought it possible that it might have a little influence upon some reformers in this Convention. For myself, I do not believe that that intimation is entitled to any weight whatever. I do not think that we sit here legislating under the fear of corporate wealth. I do not believe that we will admit it to ourselves, for a moment. And, if it were true—which I trust it is not—I believe that corporations, managed by sound and judicious men, will prefer a sound and safe general law for the creation of corporations, rather than a system of special enactment. I believe that corporators generally are in favor of it. I do not believe that they will array themselves as a class, against your principle of general law; but even if they should so array themselves, who doubts where the victory would rest? Possibly these corporations may have their influence in this hall; but, let them once array themselves as a class, against the individual rights of the citizens of Massachusetts, and these corporations will soon go to the wall. I say that there is no fear here; corporators may be too strong for your legislatures, they may be strong in this Convention, but they are not yet stronger than the masses of the people; and, farther, I hold that this was one of the main reasons why this Convention was called. We have talked about matters here that are small in importance, when compared with this; and, if you will refer to the document which has been so often referred to—I have not examined it myself until this morning, and I regret that I have not had time to examine it better, and I must confess, also, that I was not aware, until now, that it had taken such decided ground upon this subject. I refer to the report of the committee upon the subject of this Convention, written by the able gentleman for Erving, (Mr. Griswold). I say if gentlemen will refer to this document, which is the report of the joint special committee of the Senate and House of Representatives, to whom was referred so much of the governor's message as related to a revision of the Constitution of the State, they will find that this was distinctly put forth as one of the issues before the people, in calling this Convention. I will ask your attention for a moment, to what is herein assigned as one of the reasons for bringing this Convention together:—

"The Committee submit, that the Constitution should provide for general instead of special laws. How far this principle shall be made to apply to specific subjects, will remain, of course, for the Convention to settle; but we have no hesitation in saying, that banks, railroads, manufactures, and insurance companies, may be safely subjected

to general laws; and, probably, on more thorough examination, the principle may be extended much farther. But the principle, even to this extent, once settled, and incorporated into the Constitution of the State, will effect an entire change in our legislation. Our laws will then be more simple, plain, and better understood; their benefits will not be confined to a few, or to certain classes; but will be equal in their operations, diffusing their benefits among all alike, whether high or low, rich or poor. A large portion of the time now occupied by each session, in passing and amending special acts, will be saved; thus furnishing, as we have already suggested, a strong reason for limiting the sessions of the legislature to a period much shorter than is now usually occupied.

"This important provision should be incorporated into the Constitution; it should become a part of the organic law of the State, a fundamental principle in the government, that it may be placed beyond the reach of private and personal interests, or party action, or the fluctuating opinions of successive legislatures."

Now, Sir, let me ask if we can take any issue more distinctly than we took this issue there? Is there any dodging there? Is there any equivocation there? Did we not put this issue into the canvass, when we appealed to the people for a call of the Convention? Why, Sir, we put it everywhere. It was in the Democratic State Address, and in the Free Soil State Address; and, to-day, it is the most popular question in the Commonwealth, in reference to all that we have talked about in regard to this Constitution? Men of no party have ever raised their voices, in a tangible shape, against the great principle that all your laws creating corporations shall be equal laws. No, Sir; they do not meet the principle; they dodge it; they go round it, and come up here, year after year, and evade it, until nearly one-half of the capital of the State is incorporated capital. Now, Sir, in all conscience, let the industry of the men of small means be incorporated also. Let them have like privileges. I do not go for levelling all down to one level, but I go for raising all up to one principle—for placing all upon the same platform. "Right" is what I go for. I do believe that there are advantages occasionally to be gained by incorporations. I do not believe that the time will ever come—as some suppose—when this corporation system will give way entirely. Corporations may sometimes come into conflict with individual capital and enterprise, but, if they are formed under a general law, then the same law is open to all, and the poor man, with his small means, can combine with others, just as the men can do who are worth their millions. A general law, I hold to be democratic, in every sense of the word.

The gentleman from Natick, (Mr. Wilson,) told us the other day, that he had known gentlemen come here, year after year, and make their thousand dollars during the session of the legislature, in lobbying through acts granting special privileges. And the gentleman from Boston, (Mr. Giles,)—whose depth of thought, and of research into the great principles upon which our constitutional law is founded, is, to my mind, equal to that of any Democrat, or Free Soiler, or man of any other party in the Convention—told us, yesterday, that there was danger that corporate wealth would become too strong for the Commonwealth. I agree to all that. But how is it to become so? Simply, by confining your corporations to a few men, and thereby give them special advantages to accumulate and swallow up the wealth of the Commonwealth, at the same time that you deny to the poor man the right of self-association for similar objects. Now, a poor man can hardly undertake to get a charter through the legislature. There was a small company of mechanics in my town, who wanted an act of association, to manufacture joiners' tools. They presented their matter to the legislature, and sent an able man before the committee, who made out a case, as the gentleman from Boston, (Mr. Schouler,) would say. The legislative committee reported in favor of it. The bill was a long time discussed in the House of Representatives, but it finally failed of being passed, by one or two votes. The second year they applied again, and, after an expenditure of almost six hundred dollars, the act was passed, by the casting vote of the president, and it became a law. Now, why did these poor men fail, in the first instance? They could not reach the sources of influence in the legislature; they could not go to A, to B, and to C, and say, this is an institution which will favor your particular views, and therefore ought to be chartered. If they could have done that, there would have been no trouble. But they came before the legislature with industry and small means, and endeavored to make out a case for a charter. But such appliances had but little influence the first year, and they failed, though the second year, by unremitted exertions, they succeeded. Well, they obtained the charter, and went to work. They were prospered, until overtaken by a calamity of which they had no control. A fire burnt them out clean, and, unfortunately, they were but slightly insured.

Now, what was the advantage of your general law, in this case? They had not themselves means to rebuild, but there was a general law which allowed these men to seek capital wherever they could find it. Conway being a small town, the capital could not be obtained there. They went

over to Greenfield, and showed to the capitalists of that place the state of their business, the amount of work they had performed, and the profits they had made, and the result was, that those capitalists immediately put into the concern $20,000. The establishment was put into operation there, and they are now doing a flourishing business. What would have been the result, had there been no general law? They would have scattered, or have gone off into Connecticut, and commenced their works there, and Massachusetts would have lost the benefit of their skill and knowledge in that particular branch of business; and would have lost the advantages arising from the industry and capital employed in it.

Now, in this instance, we see an advantage which should be retained under a general law, and who is there that wants to continue the present system, of passing acts of incorporations? The gentleman from Boston says we are liberal in granting charters. We are sometimes. We granted a great number in 1852, amounting, according to some gentlemen, to $14,000,000.

In the general law, we had restricted the formation of companies having a capital of over $200,000. At the time of the passage of that law, the legislature was conservative—and the gentleman from Natick, (Mr. Wilson,) was one of them—and, doubting whether a law that did not limit the amount of capital in each case, could be carried through the legislature, the law was limited as it should not have been; but, remembering the principles laid down by our fathers, that all laws should be equal, they said we will begin to return to an equality in law—from which, by special acts we have departed—by allowing small corporations to be formed first, and we will limit the capital to two hundred thousand dollars. Well, it was probably wisdom so to direct that measure at that time, for it would have failed in the legislature in any other shape.

Now, I desire to put the question to gentlemen in this House, whether, as individual men, forming the organic law of the Commonwealth of Massachusetts; whether, as honest and fair minded men, you want to continue in Massachusetts a system by which individuals can make their thousand dollars a year by lobbying through special charters? Whether you wish to turn your legislative halls into a body of men who can and may be influenced to favor the rights of the few, at the expense of the rest? Where is the man who wants to continue this system? I do not know one.

I gathered an idea or two from the gentleman from Taunton, (Mr. Morton,) the other day, though he was speaking upon another subject, which cover the entire question. The gentleman said, "adopt principles of right and justice, and they never will mislead an individual, or a party, of the Commonwealth. You never can have liberty, unless it is based upon principles of equality, and the most sacred exercise of the principle of equality, is in the enactment of laws which shall bear upon, and privilege alike, all citizens."

Now, gentlemen know what a privilege is. It is a peculiar advantage enjoyed by one man, and not enjoyed by all men; and if you grant a special charter, giving to a few individuals special rights and advantages, you are granting special privileges; and, so far as they are special, they are wrong and unjust, and ought to be unconstitutional. I say it is a matter of right, which has come down to us as an inheritance from our fathers, that every citizen in the Commonwealth has a right to equal advantages and privileges, and you have not the right, according to the principles upon which you based your Constitution, to trespass upon individual rights, or to make one man rich by giving him special privileges, and deny riches to another man, by a refusal of the same privileges.

Now, the gentleman from Cambridge, (Mr. Sargent,) this morning, in saying something upon this subject, asked if we have not done well heretofore? I think we have done well in this Commonwealth, and as a Commonwealth, in spite of the disadvantages growing out of the system of special legislation. But our prosperity has not been owing to that system, but has come in spite of it. We are indebted for it to other things—to our common schools, our industry, our capacity of acquiring wealth, our manufacturing, our ingenuity, our Yankee enterprise, and things like these. The gentleman from Cambridge will not say our prosperity is owing to the granting of special charters. He is too practical a man for that. I contend that we should have had more wealth and enterprise, more diversity of manufactures, more advantages every way, if we had adopted a system of general laws years ago.

This is no experiment in other States. The State of New York, great in all that pertains to business enterprise—unsurpassed, and unparalleled in her business achievements—is worthy of being referred to and copied. She may truly be called the Empire State, and we may well look to her for example. She began in this matter of passing general laws, as far back as 1838, and, in that year, passed a general law in relation to the matter of banking, the most difficult department of all. She continued to increase her number of general laws, one after another, down to 1846, when her

new Constitution was formed. In that Constitution a provision was inserted, that no special charter should be granted. And this provision was not rashly adopted. She had had such a system partially in operation for twelve years, and even longer,—but I only go back to the time of the passage of the general banking law,—and the people of that State considered the matter of so much importance, that they incorporated it into their Constitution.

So the people of the great agricultural State of Ohio, after suffering many years from special legislation, and special grants, got together, and called a Convention mainly in reference to that matter. I was in Ohio at the time, and the principal question in the canvass, was that in reference to altering the Constitution with regard to the creation of corporations, and of the right of the legislature to pass special laws for them. The people carried the principle that corporations should be created under general laws, and they adopted the Constitution, embodying that provision, by a large majority.

I am yet to hear of, or find a man in any State in this Union, where general laws have been established, who finds fault with such laws, unless it be that man who is wanting special privileges under special law, for himself. That general law of Massachusetts passed in this State, which has been called a "corporation-ridden State"—though I do not believe it true—that law has never been attacked. Her legislature has passed from the hands of one party to the other, but they dare not touch it. The principle is so in accordance with the principle of right and justice, which resides in the breast of every one of our citizens, that no man has dared to rise and attack it, or move to repeal it.

And, in reference to the banking law, which has been referred to, they have not repealed that law. Why have they not done it? Gentlemen say the law is not used. I say it will be used. And I say that the law in relation to banking would have been used, ere this, extensively, had it not been for the idea running through the minds of many, who wanted special privileges, that by waiting, they would be able to obtain from the legislature a special charter, with those special privileges. As it is now, a bank is soon to be put into operation, by some shrewd financiers of the city of Boston, under that law. A man who was formerly a member of the legislature from the city of Boston, and who went for general manufacturing and banking laws,—as upright and intelligent a legislator, in all that pertains to manufacturing and banking, as the city of Boston ever sent to the House of Representatives—now connected with the Merchants' Bank of Boston, said to me, a day or two since, that they were about to organize their immense capital under that law.

Connecticut passed a general banking law, a year ago, and six or eight flourishing banks have been incorporated under it; and they consider the system a good one. It allows men to loan money, who have it to loan, and men who have not got it, should not be allowed to bank upon the mere credit which they can obtain from their promises to pay. No mere bank charter should ever be considered a basis for bank issues, however carefully and fully a case might have been made out before your legislature.

I say the principle should be applied to banking. If you retain your present system of banking, open the business to all, and let all be bankers who choose to be, and then the thing will regulate itself. Serve us all alike. That is what I contend for. I do not mean to say in what particular form you should have your banking laws, but whatever it is, you should have it under general laws. I prefer the system of a deposit, pledged for the redemption of issues, for the safety of the bill holders. I do not, however, attack any system of banking; but, I only wish the law, whatever it is, to be general.

I say, too, that this is no experiment in this State. We have general laws, and they have been framed to meet some of the evils experienced under the system of special laws. It would require the legislature to sit the year out and the year in, if they were required to pass special laws for every religious society, or lyceum, and the like, that is formed in the Commonwealth. But we have general laws for the incorporation of religious societies, libraries, wharf companies, joint stock companies, banking companies, and for many other things. Now, who has ever found any fault with these general laws? We have general laws upon these things, and why not have them upon all others, and allow to individuals the right of self-association, and stop this system of special legislation.

The gentleman from Boston said, that we yesterday said that it was safe to leave to the legislature a thing of as much moment as this is. I take issue with the gentleman. Enactment of a law by the legislature, for loaning the State credit, would be, in its nature, a general law, bearing equally upon all the citizens of Massachusetts; equally upon the constituents of every member of the legislature. It would, possibly, be a general law intended for the benefit of a special corporation. But the grant of a loan is a general law, and is within the principle which I advocate. Well, Sir, is not the experience of other States—

is not our own concurrent experience—sufficient to satisfy us of the importance of this principle? Is it not enough to satisfy us that it ought to be incorporated into our Constitution? As I have before said, we may well learn wisdom from the experience of other States, especially when we have so fully proved a system, as we have in relation to this matter. We have to oppose the competition of the great State of New York, our great commercial rival. New York allows all her citizens freely to enter into corporations under general rules and regulations. And why should we not unyoke our own citizens? Why should we not take off the trammels from their necks, and give them a fair opportunity to compete with those of New York? Why should they not have every advantage which general and wise laws can give them? I tell gentlemen that, but for these trammels, our manufactures would have been much farther advanced than now. We should have been much farther advanced in many things. Let us, then, incorporate this provision into our Constitution, as a principle of right and justice, where it never can be shaken and evaded. But upon this point, I have said enough.

In the next place, I think this resolve should be incorporated into the Constitution, for the reason given by the gentleman for Wilbraham, (Mr. Hallett,) that it will save the time of the legislature. All the legislatures of the State of Massachusetts, for many years past, have spent more than half, many of them more than two-thirds their time, in granting special charters to corporations, which might all have been saved by a general statute that would have occupied but a single page upon your statute book.

Here I will take occasion to say, that there is no ground for apprehension upon the part of the members of the Convention that should deter us, or make us hesitate to adopt this resolve, on account of any supposed interference with the right of eminent domain, which has been referred to in the course of this debate. I appeal to the judgment of the legal gentlemen of the Convention, to whose judgment I would certainly defer in these matters, whether you cannot as well provide by general law that the right of eminent domain shall be secured to the citizens, as by special law. You can provide, as they have done in Ohio—although I think the restrictions are unnecessarily severe—that the property of a man shall not be taken for a railroad, until he has been settled with, and until it is paid for. In New York, the railroad companies are authorized to settle with the individuals for their land, if possible; but in case an individual cannot be traded with, they have the right to appeal to the legislature. But I understand that since this law has been in operation in New York, no appeal has been made to the legislature, for the right of way through the lands of any individual. The railroad companies have always managed to compromise with them in some way. So that you not only can protect your citizens in the right of eminent domain, by general laws as well as by special, but you can do it all the better; for, in drawing up a general law, you will be more careful so to frame it as not to infringe upon the right of any individual, half as much as you will be likely to by special law; and this furnishes an additional argument for putting this provision into our Constitution.

I have said that such a provision will promote the business interests of the community generally; but I will not take up the time of the Convention in dwelling longer upon this point, for I do not desire to weary the patience of the Convention.

I pass on, then, to my next argument in favor of this provision, which is, that it will give us uniform laws in reference to corporations. Now, if any gentleman will take the pains to examine our statute books with reference to this matter, he will find a great diversity in these special laws. You will find that privileges are granted to one corporation which are denied to another; and you will find that, when compared with each other, they are very unequal and unjust. In looking over these laws, the other day, I noticed that one corporation in the county of Worcester was granted the right to sell liquor, while another was restricted from selling it about the premises. Now, I do not believe you could get such disagreements in point of privilege, granted or incorporated into any general law. No legislature would think of framing such a law. But, whatever might be the privileges granted, all would be entitled to the same. But some favored corporation will start such dissimilar charters, under special legislation. They will go before the legislature with all the appliances which they well know how to use, and, in some manner, before they give up, they will manage to get what they want. But this system of general laws will give us uniform regulations and privileges, for all corporations to be created in future. They will afford a reference which all persons can, at any time, examine, to ascertain the liability of stockholders, or for any purpose. They will be in the hands of the laborer and the creditor, in one single act, which he can examine at any time, and through which he can ascertain whether the proprietors are liable for the last six months of his service. He may find out the entire provisions of law, relative to the corporation by which he is

employed, as he cannot find out now. Under the existing laws, he may go from one corporation to another, through the hundred towns in which they are located, and he will find different provisions of law applying to each of the different companies.

But, Sir, these laws are unequal, not only as regards manufacturing companies, but also as regards insurance companies. I belong to an insurance company which petitioned the last legislature to be allowed to raise a guarantee capital, to guarantee the policies issued by that company. It was only such a privilege as had been given to other companies. Precisely the same as had been granted to an insurance company in Worcester, precisely the same as had been granted to another in Springfield, but it was denied to our company, and for what reason? We are, to-day, raising policies of insurance without guarantee, for that right has not been given us. All we asked was, that the association might raise $100,000, by the payment of stock on the part of individuals, and that we might be allowed to guarantee policies upon the strength of this capital, and we were denied this right. It could not be granted to us by the legislature, and why? Because, possibly—I do not say this was the reason—sundry influential men happened to be placed upon the committee having the subject in charge, who were connected with other insurance companies, and by various appliances upon the part of the agents of other companies which have this privilege, that committee was induced to report against our petition. I say possibly these were the reasons—perhaps others existed, if so, I do not know what they were, as we did not come before the committee at all, supposing that the request, being the same as had been granted to other companies, and, being so reasonable in its nature, would be acceded to without a question being raised; and I was never more surprised in my life, than when the committee reported that it was inexpedient to grant the prayer of the petition, or, to use their form, that the petitioners have leave to withdraw. Now, Sir, I want to know by what right or justice, you give to a company in Worcester, and to another in Springfield, the authority to raise a guarantee capital for their insurance policies, and deny that privilege to me? What have I done here in the good old Commonwealth of Massachusetts, to forfeit my rights of citizenship, and to entitle me to less advantages in the acquirement of property, than are accorded to others? I know of no act of mine that ought thus to disfranchise me, nor do I know of any act of yours that should entitle you to privileges above me.

Now, Sir, I have no manner of doubt that the incorporation of this provision into the Constitution, will do away forever this system of injustice and inequality, and that every honest man in Massachusetts will thereafter enjoy equal privileges with every other man in the Commonwealth. I do not believe that when you come to have a system of general laws, you will find any man to rise up and advocate the reëstablishment of our existing system of special laws. Never, never.

It will have the effect, as I before remarked, to shorten the length of the sessions of the legislature nearly one-half, and it will destroy the principle of monopoly. That is the chief feature of which complaint is made, and it is one of the principal objections, to my mind, to the continuance of the present system. Privileges are given to certain associations, against the rights of the whole. They are granted to a few, and denied to the rest. Therein consists the idea of monopoly, and nowhere else.

Now, Sir, I wish to say a single word farther upon this point, and I will close. A fear is entertained, in the minds of some gentlemen, that, by the adoption of this provision into your amended Constitution, you will, to a certain extent, render it unpopular among the people, when they come to vote upon its adoption. Now, I verily believe, that you can incorporate no one provision into your Constitution, that will so much aid you in securing the adoption of the whole, as this simple declaration, that hereafter special legislation shall cease. Why, Sir, it has been a cardinal doctrine of one party in the Commonwealth, ever since the days of our boyhood. Ever since I knew anything about politics, this has been a prominent object sought to be attained by one of the parties of the Commonwealth. The gentleman from Taunton, (Mr. Morton,) in his message in 1839, ably recommended that we should abolish this system of special legislation. Early in our history as a government, such a thing as special privileges was advocated by no one. It has grown upon us by degrees, and I think it is time that it should be stopped. But we never can stop it unless we do it in the Constitution.

Your recent history, to which the gentleman from Boston (Mr. Schouler) has alluded, proves that whenever the legislature has enacted a general law, it has worked well. Let us, then, take off restrictions from general enterprise, and cease to be partial in our laws, by adopting this restriction. Let us so amend our organic law, that there shall be no more special legislation; hereafter, whatever enactments you make, let them

belong to every man alike, then they cannot be complained of.

[Here the hammer fell, the hour to which the speaker, as chairman of the Committee, was entitled, by the order of the Convention, having expired.]

Mr. DENTON, of Chelsea. I think this subject has been amply and fairly discussed, upon both sides. I think it has been discussed with great ability, and I therefore feel it my duty to move the previous question.

Mr. SCHOULER, of Boston. I hope the previous question will not be sustained at the present time. If the question has been discussed, it has been all on one side. We have had a speech from the gentleman for Wilbraham, (Mr. Hallett,) half an hour in length. The gentleman from North Brookfield, (Mr. Walker,) spoke half an hour. We have had a speech from the gentleman from Charlestown, (Mr. Frothingham,) and an hour's speech from the gentleman from Conway, (Mr. Whitney,) in favor of the adoption of this proposition, while scarcely anything has been said upon the other side. I should like ten minutes to set myself right upon this question. It seems to me, that the question is by no means exhausted. There are many points which have not been touched upon at all. The gentleman from Cambridge, (Mr. Sargent,) my colleague from Boston, and myself, have not spoken three quarters of an hour altogether; while the gentlemen upon the other side have spoken two hours and a half. The gentleman from Conway, (Mr. Whitney,) directed nearly his entire speech against the few remarks which I had the honor to make, and I desire ten minutes to say something in reply.

Mr. BIRD, of Walpole. I only want to say that I hope the motion for the previous question will not be withdrawn, and that it will be sustained by the Convention. The gentleman from Boston, (Mr. Schouler,) has had the floor once, upon this subject.

Mr. SCHOULER. I am aware that I have had the floor once, but only for a very few minutes, and the gentleman from Conway, (Mr. Whitney,) has directed his whole argument against the ground which I took. In the usual course of debate, the chairman of a Committee opens the debate upon the subject over which he has had charge, but, in this instance, he has closed the debate.

Mr. WHITNEY, of Conway. I would suggest to the gentleman from Chelsea, (Mr. Denton,) who moved the previous question, that he withdraw his motion. I desire to treat the gentleman from Boston with courtesy. I did not finish the remarks I had intended to make before the hammer fell, and I always want the privilege of the last word, when I can have it, but I nevertheless desire that the gentleman from Boston should have an opportunity to reply, if he desires it; and I therefore suggest to the gentleman from Chelsea that he withdraw his motion for the previous question, and move that the question be taken at twenty minutes past 12 o'clock. That will give the gentleman from Boston ten minutes to reply.

Mr. FROTHINGHAM, of Charlestown. I rose to make a suggestion somewhat similar to that of the gentleman from Conway, (Mr. Whitney). I have myself occupied not more than fifteen minutes in this discussion, and I should like an opportunity of saying something in reference to what has been said by the gentleman from Boston. I dare say there are many others who would also like to say something. I know, however, that the time of the Convention is precious, and, for one, I would be willing to forego the pleasure of answering the gentleman from Boston. I would, nevertheless, suggest to the gentleman from Chelsea, that the time for taking the question be fixed at half past 12 o'clock. This is a very important subject, and one which has occupied but very little of the time of the Convention. It seems to me but just, that the gentleman from Boston, (Mr. Schouler,) should be allowed time to answer the gentleman from Conway, and I think that to allow a little farther time for the discussion of the subject, would not be objectionable. I will, therefore, venture to suggest that the time for taking the question be fixed at half past 12 o'clock.

Mr. WHITNEY, of Boylston. I have been waiting for some time for an opportunity to say a word upon this subject, but I see there are many others who are also waiting to say a word, if the previous question is withdrawn. If our friends are willing to waive their rights, I am willing to waive mine, and let the question be taken now. I hope the previous question will not be withdrawn.

Mr. FRENCH, of Berkley. I hope the gentleman from Chelsea will withdraw his call for the prevous question. I have not said a word upon this subject, and the Convention very well know that I shall detain them but a short time in what I have to say. If I could have obtained the floor at a proper time, I wanted to say a word in reply to the gentleman on my left, (Mr. Schouler). But what I wanted to say at the time, I have now nearly forgotten, [a laugh,] and I shall therefore be content with still less time than I should then have occupied. If the Convention will give me five minutes, it will be all I ask.

Mr. President: I shall be sorry to get into deep water, but if I do, it will not be the first time I have been off my soundings.

Mr. BATES, of Plymouth. I rise to a question of order. I believe the gentleman is discussing the question, and replying to the member from Boston, (Mr. Schouler).

Mr. FRENCH. I have not come to him yet. [Laughter.]

The PRESIDENT. The Chair does not understand that the gentleman from Berkley is replying to the gentleman from Boston.

Mr. FRENCH. This is a question in relation to corporations, or whether we are to have a general or special law as to corporations. What object do associations of persons have in view in being incorporated. They have some object or other——

The PRESIDENT. It is not in order for the gentleman to discuss the merits of the question.

Mr. BIGELOW, of Grafton. I hope the previous question will be sustained.

Mr. DENTON, of Chelsea. I wish the gentleman from Boston, (Mr. Schouler,) to understand that it was not my intention to cut him off from replying to the gentleman from Conway, (Mr. Whitney). I listened to his speech with a great deal of pleasure, and I think he went over the whole ground, and I really think that he would not have anything more to say, except in reply to the gentleman from Conway, which would lead to still farther discussion, and therefore I insist upon the previous question.

The PRESIDENT. The Chair desires to remark, in relation to the suggestion of the gentleman from Boston, (Mr. Schouler,) that, with the exception of the mover of the amendment, the floor has been given alternately to the friends and opponents of the resolves.

The previous question was seconded and the main question ordered.

The PRESIDENT. The question first in order is, upon the amendment moved by the gentleman from Oxford, (Mr. De Witt).

Mr. DE WITT. I withdraw the amendment.

The PRESIDENT. The question now recurs upon the motion made by the gentleman from Worcester, (Mr. Davis,) to strike out all after the word "resolved," and insert the following, as a substitute:—

*Resolved*, That it is expedient to incorporate into the Constitution a provision, that corporations shall not be created by special act when the object of the incorporation shall be attainable under general laws.

The question was then taken upon Mr. Davis's amendment, and it was agreed to.

The PRESIDENT. The question now recurs upon ordering the resolve to a second reading, as amended.

Mr. STETSON, of Braintree, demanded the yeas and nays upon that question.

They were ordered.

The yeas and nays were then taken, and there were—yeas, 188; nays, 52—as follows:—

YEAS.

| | |
|---|---|
| Adams, Shubael P. | Edwards, Samuel |
| Aldrich, P. Emory | Fay, Sullivan |
| Allen, James B. | Fisk, Lyman |
| Alley, John B. | Fitch, Ezekiel W. |
| Alvord, D. W. | Foster, Abram |
| Andrews, Robert | Fowle, Samuel |
| Austin, George | Freeman, James M. |
| Baker, Hillel | French, Charles A. |
| Ballard, Alvah | French, Samuel |
| Barrett, Marcus | Frothingham, Rich'd, Jr. |
| Bates, Moses, Jr. | Gale, Luther |
| Bigelow, Edward B. | Gardner, Johnson |
| Bird, Francis W. | Gates, Elbridge |
| Bishop, Henry W. | Giles, Charles G. |
| Booth, William S. | Giles, Joel |
| Boutwell, Geo. S. | Gooch, Daniel W. |
| Boutwell, Sewell | Gooding, Leonard |
| Bradford, William J. A. | Green, Jabez |
| Breed, Hiram N. | Griswold, Josiah W. |
| Bronson, Asa | Griswold, Whiting |
| Brown, Artemas | Hadley, Samuel P. |
| Brown, Hiram C. | Hallett, B. F. |
| Brownell, Joseph | Harmon, Phineas |
| Bryant, Patrick | Haskins, William |
| Buck, Asahel | Hathaway, Elnathan P. |
| Burlingame, Anson | Hawkes, Stephen E. |
| Cady, Henry | Hayden, Isaac |
| Caruthers, William | Heath, Ezra 2d, |
| Case, Isaac | Hewes, James |
| Chandler, Amariah | Hewes, William H. |
| Chapin, Daniel E. | Hobart, Aaron |
| Childs, Josiah | Hobart, Henry |
| Churchill, J. McKean | Hobbs, Edwin |
| Clark, Ransom | Hood, George |
| Clarke, Alpheus B. | Hooper Foster |
| Clarke, Stillman | Howard, Martin |
| Cleverly, William | Hoyt, Henry K. |
| Cole, Sumner | Hunt, Charles E. |
| Crane, George B. | Hurlbut, Moses C. |
| Cressy, Oliver S. | Jacobs, John |
| Crittenden, Simeon | Johnson, John |
| Cushman, Henry W. | Kingman, Joseph |
| Cushman, Thomas | Knight, Hiram |
| Cutler, Simeon N. | Knight, Jefferson |
| Davis, Ebenezer | Knowlton, J. S. C. |
| Dean, Silas | Knowlton, William H. |
| Denison, Hiram S. | Knox, Albert |
| Denton, Augustus | Kuhn, George, H. |
| DeWitt, Alexander | Ladd, Gardner P. |
| Duncan, Samuel | Lawrence, Luther |
| Dunham, Bradish | Leland, Alden |
| Durgin, John M. | Lincoln, Abishai |
| Eames, Philip | Littlefield, Tristram |
| Earle, John M. | Marble, William P. |
| Easland, Peter | Merritt, Simeon |
| Edwards, Elisha | Mixter, Samuel |

Morton, Elbridge G.
Morton, Marcus
Morton, William S.
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pomroy, Jeremiah
Pool, James M.
Putnam, John A.
Rantoul, Robert
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Rockwood, Joseph M.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Chester
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Souther, John
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stiles, Gideon
Talbot, Thomas
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Viles, Joel
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Waters, Asa H.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.

NAYS.

Appleton, William
Aspinwall, William
Atwood, David C.
Barrows, Joseph
Beebe, James M.
Bennett, William, Jr.
Bigelow, Jacob
Bradbury, Ebenezer
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Bumpus, Cephas C.
Chapin, Henry
Cogswell, Nathaniel
Copeland, Benjamin F.
Crowninshield, F. B.
Gardner Henry J.
Gilbert, Wanton C.
Gould, Robert
Hale, Artemas
Hale, Nathan
Heard, Charles
Hersey, Henry
Hindsdale, William
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Jackson, Samuel
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Lincoln, Frederic W., Jr.
Livermore, Isaac
Loud, Samuel P.
Miller, Seth, Jr.
Orcutt, Nathan
Paige, James W.
Park, John G.
Read, James
Reed, Sampson
Sargent, John
Schouler, William
Tileston, Edmund P.
Tower, Ephraim
Tyler, John S.
Upham, Charles W.
Walcott, Samuel B.
Walker, Samuel
Weeks, Cyrus
Wheeler, William F.
Wilson, Milo

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Benjamin P.
Allen, Charles
Allen, Joel C.
Allen, Parsons
Allis, Josiah
Ayres, Samuel
Ball, George S.
Bancroft, Alpheus
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Beach, Erasmus D.
Beal, John
Bell, Luther V.
Bennett, Zephaniah
Blagden, George W.
Bliss, Gad O.
Bliss, Willam C.
Briggs, George N.
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hammond
Brownell, Frederick
Bullen, Amos H.
Bullock, Rufus
Butler, Benjamin F.
Carter, Timothy W.
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clark, Salah
Coggin, Jacob
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Cummings, Joseph
Curtis, Wilber
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Isaac
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Doane, James C.
Dorman, Moses
Easton, James, 2d
Eaton, Calvin D.
Eaton, Lilley
Ely, Joseph M.
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fiske, Emery
Foster, Aaron
Fowler, Samuel P.
French, Charles H.
French, Rodney
Gilbert, Washington
Goulding, Dalton
Goulding, Jason
Graves John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Haskell, George
Hayward, George
Henry, Samuel
Heywood, Levi
Hillard, George S.
Holder, Nathaniel
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.
Ladd, John S.
Langdon, Wilber C.
Lawton, Job G., Jr.
Little, Otis
Loomis, E. Justin
Lord, Otis P.
Lothrop, Samuel K.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meader, Reuben
Monroe, James L.
Moore, James M.
Morey, George
Morss, Joseph B.
Morton, Marcus, Jr.
Nash, Hiram
Noyes, Daniel
Nute, Andrew T.
Oliver, Henry K.
Packer, E. Wing
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.

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|---|---|
| Phinney, Silvanus B. | Sumner, Increase |
| Pierce, Henry | Swain, Alanson |
| Plunkett, William C. | Taber, Isaac C. |
| Powers, Peter | Taft, Arnold |
| Preston, Jonathan | Taylor, Ralph |
| Prince, F. O. | Thayer, Joseph |
| Putnam, George | Tilton, Abraham |
| Richardson, Samuel H. | Train, Charles R. |
| Ring, Elkanah, Jr. | Underwood, Orison |
| Rockwell, Julius | Upton, George B. |
| Sampson, George R. | Vinton, George A. |
| Sanderson, Amasa | Wales, Bradford L. |
| Sheldon, Luther | Wallace, Frederick T. |
| Sherman, Charles | Warner, Samuel, Jr. |
| Sleeper, John S. | Wetmore, Thomas |
| Stevens, Charles G. | Wilder, Joel |
| Stevens, Granville | Wilkins, John H. |
| Stevens, William | Wilkinson, Ezra |
| Stevenson, J. Thomas | Williams, Henry |
| Storrow, Charles S. | Williams, J. B. |
| Strong, Alfred L. | Wood, Nathaniel |
| Stutson, William | Woods, Josiah B. |
| Sumner, Charles | Wright, Ezekiel |

Absent and not voting, 178.

So the resolve was ordered to a second reading.

*University at Cambridge.*

The PRESIDENT. The next matter in order, is No. 2 of the calendar, being the resolve to amend section 2, chapter 5, of the Constitution, by striking out the words "University at Cambridge." The resolve has been read twice, and the question now is upon the final passage. The resolve is as follows:—

*Resolved*, That it is expedient to amend the second section of the fifth chapter of the Constitution, by striking out therefrom the words "University at Cambridge."

Mr. BOUTWELL, for Berlin. I am opposed to the passage of this resolution. If gentlemen will turn to page ninety-seventh of the rules and orders of the Convention, they will find in section 2d, chapter 5th, of the Constitution, the following:—

"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," &c.

If gentlemen will observe the peculiar phraseology of this provision of the Constitution, they will see that it has divided institutions of learning into three classes: the university at Cambridge, public schools, and grammar schools. The proposition reported to us by the Committee is, that the words "University at Cambridge" be stricken out, so that the paragraph shall read: "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 public schools and grammar schools in the towns," &c. The effect of this proposition is, to place the university at Cambridge where, as we believe, it ought not to stand, with those institutions of the State that rest upon private foundation, and are not supported by general taxation. I believe the friends of the university, at Cambridge desire to have that institution stand just exactly where, by the Constitution, it has been placed, with the public and grammar schools, preserving to it its original character as a public institution. Therefore, I am in favor of having the Constitution, in this respect, remain just as it is, and am opposed to the resolve, for the reason that it takes the university at Cambridge out of the class of public institutions, and makes it a private institution.

Mr. STETSON, of Braintree. I should like to ask the gentleman for Berlin, why the university at Cambridge should be especially distinguished from the other institutions, in this respect.

Mr. BOUTWELL. The reason for this is, that the university at Cambridge was established by act of the legislature, and endowed with the property of the people of all the Commonwealth, while neither of the other colleges has been so endowed. That is a very good reason why the university at Cambridge should stand with the grammar and public schools of the State, as an institution of the State, resting upon the foundation laid by the State. The other institutions are private institutions, while this is a public one.

Mr. HUBBARD, of Boston. From the discussion which took place yesterday, I suppose it is a mooted question, whether the university at Cambridge is to be regarded as a public institution, over which the State has entire control, or whether it is a private institution, which the legislature cannot touch. It seems to me, it is assuming the question at issue, to assert that it is a public institution, standing upon the same foundation with our public schools, supported at the public expense. It is said, that the provision in relation to this institution was originally so inserted, when the Constitution was framed in 1780, but I suppose the reason for that was, because there was no other college or university in the State. It seems to me, that a similar provision for all the other colleges of the State, should be inserted with as much reason as this. If they all come under the provision in the antecedent clause, then the university at Cambridge will occupy the same position as the other colleges, and will have no right to claim preëminence over

them in this respect. I hope the resolve, as reported by the Committee, will be adopted.

Mr. GARDNER, of Boston. This resolve has been reported to the Convention by the unanimous voice of the Committee who had the subject in charge, and we are bound to suppose that they have given it sufficient attention to understand the bearings of the case. We must come to the conclusion that they were unanimous, because there is no Minority Report, or any other Report, but the one emanating from their chairman, recommending that the Convention should make this change. I supposed the object of this Convention was, to create a Constitution for the people of the State which should be adapted to all parts of the State, and uniform in its application to all the individuals and institutions of the State. This exception of Harvard University, as contended for by gentlemen here, acts in one of two ways, either as an obstruction to the interests of the university, and upon that ground I should oppose it, and I trust that the Convention will oppose it also, or else it acts as a benefit, as a special privilege to that university, and upon that ground I should oppose it. This institution is individually signalized in the original Constitution, simply, as I understand it, for the reason just given by my colleague, (Mr. Hubbard,)—and I have given the subject some little attention—that when the Constitution was first established, this was the only institution of the kind in the Commonwealth. We are called upon now, either to place this institution upon a footing with all the other institutions of the Commonwealth, or else give it special privileges. I am in favor of sustaining the Report of the Committee, and am in favor of adopting this resolve, irrespective of the action of the Committee, because I believe it is right, just, and democratic.

Mr. WILSON, of Natick. The chairman of the Committee, to whom reference has been made, and who is now absent, moved, the other day, to lay this matter over. Upon that occasion I understood him to say, that he made the motion to see what the Convention would do with the resolution acted upon yesterday. The gentleman from Boston says that the Committee made an unanimous Report, and that we are bound to suppose they had good reasons for making that Report. All we are bound to know about Committees, is this: that they report, and our duty is to examine their reports, and act according to our own views in regard to them. Of course, I would treat the report of any Committee of this Convention with great deference and respect, but we are not, by any means, compelled to follow the advice of those Committees. I agree with the delegate for Berlin, (Mr. Boutwell,) that we ought not to pass this resolution. Harvard College was founded by the Commonwealth of Massachusetts, in the year 1636. The Constitution so declares it, and, by its provisions, we actually pledge ourselves in the legislature to foster and cherish that institution. I regard it as standing altogether different from Amherst and Williams College. All the State did in relation to those institutions was to incorporate them, and it did not found them, as it founded Harvard College. I wish to maintain this in the Constitution as it is, as the university of Massachusetts, and I wish it to maintain that position, now and hereafter. I trust that in the future, that right will be fully and clearly established and vindicated, and therefore I hope the resolution now before us will not be adopted, and that we shall leave that portion of the Constitution precisely as it stands to-day.

Mr. BIRD, of Walpole. The gentlemen from Boston, have said that this matter in relation to Harvard College was put into the Constitution of 1780, because there was no other college in the State at that time. But, I may inquire, how it happens that it was kept in the Constitution of 1820? I say there was good reason for it. It was not retained by accident; and, admitting that it may have have been introduced in the Constitution of 1780 for that reason, which, as a matter of fact, I do not admit, yet it was retained in the Constitution of 1820, and for the reason that the relation between the Commonwealth and Harvard College is entirely different from the relation between it and any other institution in the State. It is not only the relation which exists between a founder and the institution which is founded; but beyond that, there is a peculiar relation, growing out of the fact, that the Commonwealth has had the entire control of the college from 1780 to 1810, without any exception.

From 1636 to 1810, the Commonwealth of Massachusetts had as much control of Harvard College as of anything which it undertook to manage, and the right of the Commonwealth to this control, was never questioned up to 1810. There were collisions frequently between the board of overseers and the corporation; but, without going into the history of the matter fully, I am prepared to stand upon that statement, that up to 1810, the corporation of Harvard College never questioned the right of the Commonwealth to an absolute and entire control of the institution, in every particular. That fact, as a matter of contemporaneous history, is perfectly conclusive, and it establishes a right of the legislature to control that college, which nobody claims that the legislature has over any other institution, or it establishes a

relation between that institution and the Commonwealth, which exists between no other institution and the State. The very existence of this special relation under the Constitution, implies that the Commonwealth has a right to control it, and we do not mean, by striking out that clause, to admit that the relation between Harvard College and the Commonwealth, is the same as that between any other institution and the Commonwealth. I have no doubt, that when gentlemen see the bearing of this matter, it will be retained.

In relation to the Report of the Committee, I suppose it is not improper for me to say, that the chairman of the Committee that made this Report, (Mr. Briggs,) was, at the time that he made it—for, being on the Committee on Harvard College, he expressed that opinion to that Committee —in favor, as a matter of personal preference, of dissolving the connection between the Commonwealth and Harvard College. But, gentlemen will remember that he yesterday assented to the resolution adopted by the Convention in relation to Harvard College, thus abandoning the ground he had previously taken, that as a matter of policy, it was better to abandon all connection with the college. The striking out of this phrase, is a part of the policy of severing the connection. The chairman of the Committee may have been in favor of that policy, but we all understood him yesterday, to have changed his opinion upon that matter; and, therefore, we are at liberty now to assume that he would be opposed to striking out this clause. I trust the motion will not prevail.

Mr. GILES, of Boston. The gentleman from Walpole, who has just taken his seat, has alluded to a subject which I suppose he has correctly stated. The chairman of the Committee to which this subject was referred, was also a member of a Committee to which the first section was referred. I cannot speak for that Committee, nor do I know whether any member of that Committee is present; but my impression is, that this Report was made in the expectation that the Committee to which the other subject was referred, would strike out everything relating to Harvard College, and the Report of the Committee to which the first section was referred being adopted, this resolution was expected to fall, as a matter of course. I may be mistaken, but whether it be so or not, I think it is better to let this stand, without going to the mooted question, whether this be a public institution in the sense of the common law, thereby giving the State power over it. I think there is another reason for retaining it, which is this: that this beautiful section, which I so greatly admire, after making it the duty of the legislature to cherish "all seminaries of them," to wit, of science and literature, then specifies such seminaries as the State then had, and such as she always means to have, and always ought to have, to wit: a university, and "public schools, and grammar schools in the towns."

That system of common school education, beginning now, I believe, with the primary school for almost infants, in fact, as well as in law, and terminating in your university, is that which it was designed that the legislature should cherish. I wish it to stand, for that reason, that it may always be known that we have a university, and public schools and grammar schools in towns, as making up a part of the seminaries of learning which we are to cherish in all time to come, tracing back their origin to that short and pithy clause which has been the admiration of the whole world, and deservedly so. I am, therefore, in favor of retaining that section as it stands.

The question was then taken on the final passage of the resolve, and there were, on a division, ayes, 19; noes, 108.

So the resolution was rejected.

On motion by Mr. WILSON, of Natick, the Orders of the Day were laid on the table.

*Incorporation of New Towns.*

Mr. WILSON. I now move that the Committee of the Whole be discharged from the farther consideration of the resolution in relation to the incorporation of new towns.

The motion was agreed to.

Mr. WILSON. I now move that the rules of the Convention be suspended, in order that that resolution may be considered at the present time.

The motion was agreed to, and the Convention proceeded to its consideration.

The resolution is as follows:—

*Resolved*, That the Constitution be so amended, that hereafter no town shall be incorporated with less than fifteen hundred inhabitants.

Mr. HOOPER, of Fall River. I would inquire if we have not already passed upon that question, when we acted upon the resolves relating to the House of Representatives?

Mr. WILSON. I do not so understand it. It may be necessary that the legislature should incorporate a town with less than fifteen hundred inhabitants, although that town may not be entitled to a representation in the House of Representatives. It has been necessary, heretofore, and although we have provided that a new town with less than fifteen hundred inhabitants shall not be represented, yet, if a town wishes to be incorporated without the right of representation, and it

is for their interest to be incorporated, I see no objection to it. I therefore move, that the farther consideration of the resolution be indefinitely postponed.

Mr. GARDNER, of Seekonk. I have only a single word to say, with regard to this question. I am very desirous that the resolution should pass, in some form, and, if it were admissable, I should like to move an amendment that no town should be incorporated hereafter, with less than one thousand inhabitants. If the provision stands as it is, with regard to representation, and no town can be incorporated with less than fifteen hundred inhabitants, it may deprive some towns of privileges which they ought to possess. I hope the motion of the gentleman from Natick will not prevail, and that there will be an opportunity offered to amend the resolution, and that it may then be passed. I think it will deprive certain towns in the Commonwealth of privileges which they ought to possess, and which I can conceive no reason why they should not enjoy. The gentleman from Natick lives in a very flourishing town, which is growing up and becoming wealthy; and, I suppose, he does not care so much for the interests of the smaller towns adjoining, which wish to be incorporated; at least, he is not solicitous that they should be incorporated, and have the right of representation on the floor of the House of Representatives. I know that when the basis of representation was fixed, it was provided that fifteen hundred inhabitants should be required, to entitle a new town to a representative, and I am opposed to that also. I wish, if the gentleman from Natick has no objection—and I can see no reason why he should have any—he would withdraw his motion, that this resolution may be modified.

Mr. BIGELOW, of Grafton. I do not see why, if this motion to postpone the resolution indefinitely prevails, we are not left in a position that we may incorporate a town with any number of inhabitants we please. Why do we need to put this provision in the Constitution? Why shall we say that any town with six hundred inhabitants, shall not be incorporated, if they please? It seems to me it is very proper to postpone this subject indefinitely.

Mr. HOOPER, of Fall River. I see that this resolution is somewhat different from the one in relation to the basis of representation, but it does not seem to me to embrace all that it ought to. That provides that no town shall be incorporated, with the right of representation, with less than fifteen hundred inhabitants; but there is no declaration that the town shall not be divided in a manner so as to leave less than fifteen hundred in the old town. So that I do not see, but that with this provision, a town might be divided so as to leave only one thousand, and create a new town with fifteen hundred, which would be evading the object of the provision on the basis of representation. I would suggest to the gentleman from Natick, that he withdraw his motion, and allow the resolution to be amended so as to read: that no town shall be incorporated when, by the division of a town, there are less than fifteen hundred inhabitants left in the town from which the new town shall be taken.

Mr. RANTOUL, of Beverly. It appears to me that this subject had best be left with the legislature. I think we should not impose any restrictions. Circumstances may occur, when it may be necessary to incorporate a town with a less number, and it may be exceedingly desirable to persons that the town shall be incorporated, and it may be for their convenience, and for the public interest, that it should be done. It seems to me there can be no necessity or advantage in imposing such a restriction upon the legislature that they cannot make such laws as are desirable from time to time.

Mr. FROTHINGHAM, of Charlestown. I agree with the gentleman from Beverly, who has just spoken. I hope the resolution will be postponed. It seems to me, it is entirely inexpedient and wrong in principle. If there has been any policy which has distinguished Massachusetts, and made us what we are, it has been the policy of incorporating towns. I should like to know if a community, living on contiguous territory, wishes to enjoy town privileges, and comes up to the legislature,—be it five hundred, or fifteen hundred inhabitants,—and asks the benefits of a town incorporation, what argument can be adduced to show that they should not enjoy those privileges. The question in relation to town representation, is another thing entirely, and ought not to be connected with it; that is, the principle of local self-government is one thing, and the principle of representation, is another, and the latter is always provided for. But, as to the question of the policy and the propriety of incorporating towns, there can be naturally but one answer given to it, and but one true view of it, and that is, to incorporate them whenever good and sufficient reasons can be shown for doing it.

The more towns we have, and the more power is subdivided in Massachusetts, or anywhere else, the sounder will be our republicanism. That is my view of this matter.

It has been the policy of Massachusetts, from the earliest times, to multiply towns; and it has been the object also, of those who have endea-

vored to restrict Massachusetts, to restrict the incorporation of towns. Long before the Revolution, there was an order sent over here from the British administration, prohibiting our governors from assenting to the incorporation of towns; and we took the ground here, that it was a natural right which the people had, to enjoy self-government, and so, when they could not get at the name of towns, they incorporated themselves under the name of precincts, parishes, or something else, in order to get as much of the value of this self-government as possible.

As long as I am up, I will take occasion to make a few remarks respecting one other point, in relation to the origin of our towns. I have heard it stated by the venerable gentleman before me, (Mr. Morton,)—and some others have said the same thing,—that our towns came from the custom of making forts, and perhaps out of some other institutions, such as the church. Indeed, this is a very common opinion. I am not going into a long speech about this matter, but merely to state a fact or two, or a view that has grown up out of facts in relation to this subject. Let any one go back and trace out how it was that Boston, and Lynn, and Salem, and all the earlier towns, came to be incorporated, came to be towns, not how they came by their territory, but more precisely how they came to have their form of town government. Did they obtain this right from the first charter? did they come by it from a law of the British Parliament? Did they copy the example of England, in relation to towns, and follow on in an old custom, as to electing town officers? No! not at all! They had no warrant for what they did, neither in the charter, the statute, nor usage. When Sir Edmund Andros came over here, and saw the beautiful operation of the towns, their democratic feature, their republicanism, their great popular privileges, he was jealous of the spread of Commonwealth notions, and saw that these towns were nurturing a principle anything but in harmony with the British Constitution. But there was no British law to justify this system,—nothing to justify a town, in the New England sense of the term,—and when selectmen, in resisting his arbitrary laws, pleaded town action, he snapped his fingers at them, and told them there was no such thing as a town in all New England. And Sir Edmund Andros was right. He took his idea of towns from Old England; and there was no comparison at all, as to government, between the towns of New England and the towns of Old England. That is, the governments of the towns of Old England were close corporations, self-elected councils, little oligarchies, without a single valuable popular right. There was no such thing as this in New England. How came we by our town government? This is a short story of the matter: When our people came over here, they acted, at first, in town meeting, all together; they were so many little democracies. But they soon found that this mode of determining town affairs was too inconvenient; it took up too much time; and what did they do next? Their object was to remedy an evil, and to provide for a necessary want. I can point gentlemen to the original constitution of a board of selectmen. The inhabitants of the towns came together, before there was any law of the general court in regard to the matter—years before—and signed an instrument, to the effect that, inasmuch as the trouble of these frequent town meetings was so very great, they would agree to be bound by what seven of their number should do, as though it were done by them. Then followed the election of those officers, and other officers; and this was done in Charlestown, and it was done in other towns, before there was any law to regulate elections. Such was the origin of the towns, and of town government. The people brought with them the great idea of popular sovereignty, and all through it was a struggle to apply this to their condition. They applied it to a town or local form of government, assuming the right to do it, before there was any law or practice to authorize or to justify it. In a few years the general court reorganized the towns, and made laws to regulate their proceedings, and so it has gone on from that time to this, to the immense advantage of the country.

Now, I am in favor of allowing this great idea to be established, viz.: That the people have a right to be incorporated into new towns when the growth of the community and the increase of population and change of interests in certain localities leads individuals to apply for town privileges. I see nothing in the whole system but benefits to the communities concerned, from allowing them to divide, and granting to them the right and privilege of self-government. I have been here upon this floor when large towns and old towns have been divided, when the progress of business and population have created in certain localities large interests,—commercial or manufacturing interests, it may be,—distinct from the ancient agricultural interests, where such new communities claimed the right to manage their own local concerns in their own way; or it has been the other way, that is: the agricultural interest has claimed that it ought not to be taxed to support the commercial interest, as in the case of Somerville and Charlestown. Now, what argument can be

brought against such claims? There is no argument; nor is there evil in creating towns for such reasons; and I am in favor of keeping this where it is—that is, of leaving the whole matter with the legislature.

Mr. LELAND, of Holliston. I think this matter ought not to be indefinitely postponed at this time; for I think, with the gentleman from Fall River, that there is a necessity for amending this resolve. Suppose it should pass in its present form, and hereafter a town with twenty-five hundred inhabitants should wish to be divided so as to get additional representation. We do not know what may happen, and it is wise to provide for it. Well, Sir, fifteen hundred of the inhabitants can be set off and incorporated into a new town, and the thousand who are left will also be entitled to their town rights. I think this is something which we ought to provide for, and, therefore, I hope that the resolution will be amended accordingly.

Mr. HOOPER, of Fall River. I move to amend this resolve by striking out all after the word "incorporated," and inserting the words "by a division of a town, leaving less than fifteen hundred inhabitants in the town from which the new town shall be taken," so that the resolve, as amended, will read as follows:—

*Resolved*, That the Constitution be so amended that hereafter no town shall be incorporated, by a division of a town, leaving less than fifteen hundred inhabitants in the town from which the new town shall be taken.

I fully agree with the remarks of the gentleman, and see no necessity for putting any barrier in the way of an unlimited incorporation of towns, that is not necessary to guard it in relation to representation; it has already been guarded in one respect, and it seems to me to be necessary that it should also be guarded in the other.

Mr. GARDNER, of Boston. Mr. President: It is the first time that I have made the motion which I now make, in this Convention, and it will probably be the last; but, Sir, I am not in favor of sitting here and doing business in the absence of a legal quorum of this body. I am of the opinion that there is not a quorum now present, and I therefore make the motion that the Convention do now adjourn.

Mr. SCHOULER. For the purpose of determining whether there is a quorum or not, I ask for a division.

The question being taken, on a division, there were—ayes, 38; noes, 59—no quorum voting.

Mr. WILSON, of Natick, moved that the Convention adjourn.

The motion was agreed to; and accordingly, at twenty minutes before two o'clock, the Convention adjourned.

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MONDAY, July 18, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

*Limitation of Speeches.*

Mr. BROWN, of Medway, submitted an order that hereafter all speeches, except those of the chairmen of Committees, be limited to fifteen minutes each.

The order was laid over for consideration tomorrow.

*Orders of the Day.*

On motion of Mr. WILSON, of Natick, the Convention proceeded to the consideration of the Orders of the Day, the first subject being the resolve on the subject of the

*Incorporation of New Towns,*

Which is as follows:—

*Resolved*, That the Constitution be so amended that hereafter, no town shall be incorporated with less than fifteen hundred inhabitants.

To this resolve an amendment had been moved by the gentleman from Fall River, (Mr. Hooper,) and Mr. Wilson, of Natick, had moved its indefinite postponement.

Mr. SARGENT, of Cambridge. I am opposed to the amendment, and in favor of the motion of the gentleman from Natick. I believe we are attempting to establish a false principle in the Constitution. I do not believe that the question of the incorporation of new towns can be settled upon mere numbers; it must be settled upon the circumstances which surround each particular case. There may be a case where it would be of the utmost importance that a new town should be incorporated, where there were not more than five or six hundred inhabitants; and in other cases it might neither be proper or just to incorporate a town, although there were more than fifteen hundred. I presume that the object of this amendment is to remedy an evil which it is feared may grow out of our basis of representation. If that be the case, to my mind it affords no argument in favor of adopting another wrong principle, because two wrongs can never make a

right. The amendment is proposed for the purpose of preventing the legislature from so dividing a town that the original town shall be deprived of its annual representation. Now, Sir, this matter of dividing towns, or creating new towns, is a mere matter of profit and loss. The legislature have always required, and I believe, always will require, that the petitioners for a new town should make out a clear and undeniable case, that the benefits to be derived from the incorporation of that town were greater than the evils to be inflicted; and whenever such a case is made out, irrespective of numbers, then I hold that the power should be vested in the legislature to grant the prayer of the petitioners. Suppose that a petition comes before the legislature for a division of a town in this Commonwealth in such a manner that the original town will have less than one thousand inhabitants, and will thereby be deprived of a portion of its representation. That is an element, and it is one of great weight for the legislature to consider. It is one of the elements of law, and unless they can show that benefits are to be derived which will more than counterbalance the evils, the legislature will never so dissever a town. I hold, therefore, that the adoption of this resolution, either as it was originally reported, or as it is proposed to be amended, would be ingrafting a false principle in the Constitution; it would be fettering the legislature upon an important subject, and one which, it is altogether safer to leave in their hands, so that each case may be decided upon its real merits, instead of being decided upon mere numbers. I hope, therefore, that the amendment will be rejected, and that the motion of the gentleman from Natick will prevail.

Mr. EARLE, of Worcester. I am opposed to the amendment, which is offered, because, it appears to me, that it creates just as great an evil as it attempts to remedy. It proposes to strike out the provision by which no new town shall be incorporated with less than fifteen hundred inhabitants, and to provide that no old town shall be left, by the incorporation of a new one, with less than fifteen hundred inhabitants. It permits, in fact, that a new town may be incorporated with only five hundred inhabitants; but it says, that by so doing, you shall not leave an old town with less than fifteen hundred. Now, Sir, I am opposed to any provision of this kind. I think that these town corporations are intended for the benefit of the inhabitants. They have little to do with territorial arrangements, except so far as they tend to the convenience of the inhabitants for their municipal concerns; and wherever the convenience of the people requires a municipal corporation of this kind, although there may not be more than a thousand or twelve hundred, I see no reason why they should not have it. I am, therefore, opposed to having any provision inserted into the Constitution in relation to this matter. I think that the provision, which has already been agreed to, that no town shall be incorporated, with a right to representation, as such, which had less than fifteen hundred inhabitants, is all that we need to do, and all the restriction that we need to impose. If a population of a thousand, or twelve hundred, suppose they will be better accommodated by a town corporation, without the right to representation, except as connected with the town from which they are to be set off, and choose to take an act of incorporation under such circumstances, I see no reason why they should not have it. They would then be placed in the situation of corporations formerly made, where districts were established, having all the rights of towns except that of representation. I see no reason why that right should not be still given, and therefore I am opposed both to the amendment and to the original proposition, and I hope that neither of them will pass.

Mr. HOYT, of Deerfield. I must confess that the form of the proposition, as proposed to be amended, does not meet my view; but yet I do think that it is important that some provision should be inserted into the Constitution, to regulate the creation of new towns. As was remarked by the gentleman from Cambridge, (Mr. Sargent,) this subject is intimately connected with the system of representation which this Convention have adopted; but, if I understood him, he seemed to assume that that system was wrong, and that we could not make a provision to secure a thing which was wrong, that would not itself be wrong. But to those who consider that the system of representation is right, of course, his reasoning would not apply. I think that this is a matter which should not be left entirely to the control and direction of the legislature; but, that the towns themselves should have a voice in this matter; and I should like a provision that new towns should not be incorporated without the consent of a majority of the voters of the town from which the territory was to be created. As towns are incorporated for the convenience of the inhabitants, I regard those inhabitants as the best judges of the importance, or the necessity, or propriety, in every case, of making a new town, or of making a very material change in the limits of a town, especially if the system of representation which has been adopted by this Convention, should be ratified by the people.

Mr. EARLE. There is one objection, which

has suggested itself to my mind, against having any provision of this kind, and that is this: There are cases—very strong cases sometimes—which require the incorporation of new towns where there may not be this number of inhabitants; and there will be a very great tendency, if a provision of this kind is ingrafted into the Constitution, to include inhabitants who would not choose to go to the new towns, to enlarge the limits, and thereby inflict an injury upon those who are thus taken in. It appears to me that we gain nothing by this proposition. I do not see any advantage in it. I regard the legislature as the proper judge, whether there is a good cause or not, for the incorporation of a town, because they will have all the facts before them; they can better judge whether a town ought to be incorporated, with twelve or thirteen hundred inhabitants, than we, sitting here without any facts before us, possibly can do. I think, therefore, that if we leave the Constitution as it is, we shall do the best thing that we can do.

Mr. CHURCHILL, of Milton. I am certainly in favor of some restriction of this sort, and shall vote for the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett). I think it is essentially necessary that a restriction should be placed upon the creation of additional towns, for this reason: It strikes me, that one of the evils which may grow out of the basis of representation for the lower House, which we shall probably adopt, is a large increase in the size of that body. That evil, every gentleman must see, is liable to be increased by the cutting up of large towns into one, two, or three additional towns, having between one and four thousand inhabitants, which are now entitled to send one representative to the legislature. In that way, your House of Representatives may be, by political parties, and influenced by political motives, increased, year after year, to a size which every one will regret to see. For that reason, I shall vote for some restriction.

Mr. HALLETT, for Wilbraham. I wish to suggest, for the consideration of the Convention, whether the gentleman's amendment ought not to go farther, so as to prevent the possibility of one town dividing itself into two or three towns, and thus multiply its representation? It is proposed, in the basis of representation, that no new town shall be created, with a right of representation, having a population of less than fifteen hundred inhabitants. Now, if this provision should pass, or if there be no limitation in that respect, will not this state of cases arise all over the Commonwealth? For example: Here is a town with two thousand five hundred inhabitants, which is now entitled to send one representative, and, remaining a town, intact and undivided, by no process under the basis of representation could it be entitled to more than one representative, until it had nearly doubled its population. Yet, that town of twenty-five hundred inhabitants, by taking off fifteen hundred, may make a new town, and, in such case, the new town at once acquires the right of representation; because, according to the proposed Constitution, the new town, with fifteen hundred inhabitants, will be entitled to a representative, while you cannot possibly take away the representation from the old town, with one thousand inhabitants; and thus, by this division, such town with twenty-five hundred inhabitants, will obtain two representatives. Now carry this rule to a town having forty-five hundred inhabitants, and, by taking out twice fifteen hundred inhabitants you will enable the town, so divided, to send three representatives instead of two.

It seems to me that by such a course you place the House of Representatives somewhat in the position the British Constitution places the increase of the House of Lords, by which the crown, whenever it is desirable to carry any measure in the House of Lords, and the lords being refractory and opposed to it, may create a sufficient number of additional peers, so as to obtain a majority. Even the threat to make new peers, carried the Reform Bill. And, Sir, may not any party in this House that desires to carry a particular measure at a future election, manufacture new towns out of old ones, and go on in this way and send forty or fifty additional representatives? I want therefore to guard against this, by a provision that new towns shall not add to the representation of the old towns, or one similar to that existing in the Constitution of the United States, which provides that no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the jurisdiction of two or more States, or parts of States, without the consent of the legislatures of the States concerned. I want a provision of some kind here, so far as to say that no new town shall be created within the limits of an existing town so as to increase the representation of the old and new towns, put together—so that if the legislature makes a new town with fifteen hundred inhabitants, out of an old town, leaving one thousand, they shall not do it so as to multiply its particular representation within that territory; because I regard the basis we propose, and which always has prevailed, (and that is the only principle upon which I can stand,) as a representation of *communities*, in the town or towns, and in that capacity as all copart-

ners entering into an arrangement in regard to their representation in this House; and I do not want any new partner to come in until I know on what terms, and with what capital he is to be admitted. Although there may be cases in which it will be necessary to incorporate new towns for convenience, with fifteen hundred inhabitants or under that number, I am convinced that there ought to be a provision incorporated into the Constitution, determining that these towns, thus divided, cannot multiply their representation, because, as we have seen, it would be the easiest thing in the world for any town, with over 2,500 inhabitants, to divide itself into two towns, and have more representatives than its just proportion, and which could not be done by the smaller towns or larger cities. The city of Boston, perhaps, could not do it very conveniently—but, upon the same principle, she might divide her twelve wards into one hundred towns, of fifteen hundred inhabitants each, and thus multiply her representation indefinitely. I wish to guard against any such objection to the proposed basis.

Mr. GRAY, of Boston. I do not think that we can adopt this restriction without injustice to the people of the Commonwealth. The gentleman for Wilbraham, (Mr. Hallett,) will not suspect me of being very much in favor of a large House of Representatives, or of thinking that the House the Convention has already provided for, is not large enough; but I do think that to insert a provision preventing towns from being formed for fear of having too large a House, is inflicting upon them an evil which ought to be guarded against in some other way—that is by some provision as to representation. I do not hold—and I suppose that no gentleman holds—that the sole purpose of the creation of towns is, that they may be represented as towns in the legislature. I had supposed that the greater part of the benefits which result from town government, result, so to speak, from what may be called their operation downwards from the people of the town, and not from their operation upwards in this House of the legislature. In this, I believe, is the greater part of the benefits which accrue to the towns from their particular organization as such. It is enough, I think, to say that many benefits result from the operations of these town governments in their internal structure, and I agree with the gentleman from Worcester, that we may deprive them of great advantages, and inflict upon them many positive evils by a provision of this kind. I think the whole matter can be safely left where it has always been—in the hands of the legislature.

Mr. HALLETT. Is it in order to offer an amendment to the amendment?

Mr. PRESIDENT. It is in order.

Mr. HALLETT. Then I move to amend the amendment by adding to it the following:—

"But the incorporation of any new town shall not thereby increase the whole number of representatives."

Mr. EARLE. I wish to hear the amendment read as it is proposed to be amended.

It was accordingly read, as follows:—

*Resolved*, That the Constitution be so amended, that no town hereafter shall be incorporated with less than fifteen hundred inhabitants, but the incorporation of any new town shall not thereby increase the whole number of representatives.

Mr. WILSON, of Shelburne. It seems to me that such a provision as that involved in the amendment of the gentleman for Wilbraham, (Mr. Hallett,) will amount almost to an entire prohibition in regard to the formation of any new towns. As I understand the matter, it would, in some instances, operate very hardly. Let me suppose a case. Suppose, for instance, that just upon the border of any town having fifteen hundred inhabitants, some manufacturing establishment shall be originated, forming a nucleus for a new population. Suppose, farther, that the manufacture flourishes, and the people gather together in that vicinity in sufficient numbers to warrant them—taking a very small portion from the old town—in applying for a town organization, their convenience and prosperity being thereby greatly promoted. Will anybody say that it shall be refused? On what grounds? It may be all very right and proper, but I must confess that I do not see it so. To say that there shall be no new corporation granted unless the population of the town from which the new one is to be taken amounts to fifteen hundred, I think is unreasonable, and that no such provision should be adopted. I think it would be unsatisfactory to the people. There are large sections of the country and various interests which are anxious to have new towns; and, with such a provision as this in your Constitution, I think they will be very likely to vote against it, when the question of adoption or rejection comes to be tried.

Mr. KINSMAN, of Newburyport. The proposition of the gentleman for Wilbraham, is one which I cannot but regard as unequal and unjust, and it will be found, that if we once commence this course of injustice, it will follow throughout. It appears to me that nothing can be more unjust than the proposition now before the Convention. I have, in my mind's eye, a town about ten miles in length and three in breadth, a portion of

which is largely engaged in manufacturing, and there is very little doubt that it is soon destined to be a city. Now such being the case—this establishment being in the centre of the town—neither extremity will have population sufficient to make a town of fifteen hundred inhabitants, and consequently, after the city is set off, neither of them will have a town organization. What then is to become of these extremities? The farming part of that town do not want to pay for gas, and other matters appertaining to a city; they do not want to pay for that class of schools from which they receive no benefit. These appear to me to be reasons why the matter had better be left to the legislature to arrange, as circumstances from time to time may require. I shall, therefore, vote against the amendment.

Mr. EARLE, of Worcester. It will be recollected that we have already adopted a provision, that towns shall not be incorporated with less than fifteen hundred inhabitants with the right of representation, and that is also naturally a provision against the incorporation of any town which shall leave another town with less than fifteen hundred inhabitants. It appears to me that that is going quite as far as we ought to go in regard to the restriction. The case which has been stated by the gentleman from Newburyport, is much in point, showing that cases of great hardship may arise, by any provision of a kind like that which it is now proposed to insert. From my own observation, I know that there would be many similar cases.

The question was then taken on the amendment to the amendment, and it was rejected.

The question next recurring on the amendment offered to the Report of the Committee, by the gentleman from Fall River, it was decided in the negative, and the amendment was rejected.

The PRESIDENT. The question now recurs on the motion of the gentleman from Natick, (Mr. Wilson,) that the farther consideration of this subject be indefinitely postponed.

Mr. HOYT, of Deerfield. Before the question is taken on that motion, I wish to offer an amendment. It is as follows:—

Strike out all after the word "incorporated," and insert "without the consent of the town or towns, from which the territory shall be taken."

So as to make the proposition read as follows:

*Resolved*, That the Constitution be so amended, that hereafter no town shall be incorporated without the consent of the town or towns, from which the territory shall be taken.

Mr. FROTHINGHAM, of Charlestown. I do not know that it is necessary to say a word about the amendment. I am strongly opposed to the principle that no new towns shall be incorporated unless the old ones consent to it. Why, Mr. President, the strongest reasons for the incorporation of new towns, are often the very reasons which the old towns allege against it. The reason is, that the new town has grown up with an interest about it which is distinct and separate from the interest of the old town, and, in view of those interests, it comes to the legislature, and asks as a right, that this new collection of people shall enjoy town privileges—that is to say, that they shall not be taxed for things which they do not use. You can find a great many instances, in the history of even a few years past, of this kind. Take the instance of the town of Charlestown and Somerville, in which we of Charlestown were much opposed to being divided, and nevertheless there was in Charlestown a commercial interest, and in Somerville an agricultural interest, and it was not right, upon any principle of justice, that the people of Charlestown should tax the agricultural interest of Somerville for those things which the commercial interest wished to enjoy, but which the agricultural interest stood in no need of. But I will not enlarge upon this point. It must strike every one that the principle is radically unjust, and I hope the amendment will not prevail.

Mr. SCHOULER, of Boston. I move to amend the amendment by striking out the words "town or towns," and insert the word "legislature."

The PRESIDENT stated, that if the amendment was adopted, the resolve would stand as follows:—

*Resolved*, That the Constitution be so amended that hereafter no town shall be incorporated without the consent of the *legislature*, from which the territory shall be taken." [Laughter.]

Mr. ADAMS, of Lowell, moved the previous question.

Mr. SCHOULER withdrew his amendment.

Mr. HOYT, of Deerfield. I am not in the habit of troubling the Convention, and I ask their indulgence a single moment.

Mr. ADAMS. I withdraw my call for the previous question.

Mr. HOYT, of Deerfield. In reply to the remarks of the gentleman from Charlestown, (Mr. Frothingham,) I would say that I have no doubt there may be cases of injustice under this provision,—instances in which the old town will object to setting off the new town, in cases where it is perfectly proper that the new town should be set off. All agree that the multiplication of new towns is an evil; and that it may affect the system of representation which this Convention has

adopted, any one may see with half an eye. But neither will the legislature, if it is left to them, always do justice in every case. The real evil is the multiplication of small towns, and there must be some limit upon it. I do not believe that the inhabitants of the towns themselves will always judge rightly and justly; but if it is true, as has been said and reiterated, again and again, in this Convention, that the people will decide more correctly and justly, in regard to matters concerning themselves, than any other body can, then the people, who are more directly interested in this particular question, will be likely to decide justly upon questions of this nature. I do not believe, if there should arise a case of this nature, which should operate with great injustice upon a particular body, that the people will sanction it. I do not believe that the people will be actuated by such motives as will lead them to the commission of such injustice. I hope the Convention will adopt the amendment—no, I do not *hope* that, for I think the sense of the Convention is not in favor of it—but I *wish* they would adopt it.

Mr. UPTON, of Boston. I propose to make but one single remark upon this proposition. I think that the suggestion of the gentleman for Wilbraham is worthy of consideration, and entitled to weight before this Convention. There are eighty-five towns in the Commonwealth now entitled to one representative, and if the Convention propose to leave the basis of representation as it is now, and to make no modification in the Constitution, restricting the incorporation of towns, at the very next session of the legislature, after the next census shall have been taken in 1855, you will have eighty-five more representatives from those towns than you now have. A state of things which will allow this, ought not to exist; but it is not for me, as one of the minority of this Convention, to point out how the evil should be remedied. Yet I suggest that after your basis is changed, under the census of 1855, these eighty-five towns may be divided, and there will come up here, from these towns, eighty-five representatives more than they are now entitled to send. I state this in order to bring the attention of the Convention to the consideration of its effect.

The question was then taken upon the amendment offered by the gentleman from Deerfield, (Mr. Hoyt,) and it was decided in the negative.

So the amendment was rejected.

The question then recurred upon the motion of the gentleman from Natick, (Mr. Wilson,) that the consideration of the subject be indefinitely postponed.

Mr. BRADBURY, of Newton. I understand, then, if this subject is indefinitely postponed, it will be in the power of the legislature to increase the number of the towns in the Commonwealth at pleasure, and that every town, according to the present basis of representation, that shall hereafter be created, having one thousand inhabitants, will have the right of constant representation.

Mr. EARLE. I would remark that we have already restricted that right to towns having fifteen hundred inhabitants.

Mr. BRADBURY, of Newton. Then every town which shall be created, and having fifteen hundred inhabitants, will be entitled to constant representation.

If I understand the basis which the House has established, in 1860, every town, whatever may be its present rights, which shall not contain fifty-five hundred inhabitants, will have but one representative; and in 1870, every town in the Commonwealth not possessing eighty-three hundred inhabitants, will have but one representative. As I understand it, the town of Nantucket is now entitled to three representatives, and by the ratio of increase in the basis, which we have adopted, she will have but two representatives in 1860, and but one in 1870. There are towns in the Commonwealth that will have about 16,000 inhabitants in 1870. Such is the town which you represent, Mr. President, and the adjoining town which I have the honor to represent, and they will be entitled then to two representatives, whereas they now have two representatives upon four thousand of population.

That being the basis established by a majority of this House, it affects very materially the question before this Convention, at the present time; and to postpone, indefinitely, action upon it, is equivalent to a rejection of it, and will leave it in the power of the legislature to increase this difficulty, and to increase the disproportion which now exists.

Another thing, it most manifestly increases the political motives which have ever existed for the creation of new towns. There is a political motive, every-body knows,—and parties here have been charged with being governed by such considerations,—for the increase of the number of towns, and so far as political considerations have had any weight heretofore, they have been increased by the decision of this Convention, most manifestly.

I think the consideration of the question ought not to be idefinitely postponed, but that some action should be had in reference to it. An indefinite postponement is equivalent to a rejection of all action.

The question was then taken upon the motion submitted by the gentleman from Natick, (Mr. Wilson,) and it was decided in the affirmative—ayes, 133; noes, 46.

So the subject was indefinitely postponed.

*Payment of Officers of the Convention.*

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The Committee on the Pay Roll, who were instructed by an order, adopted on the 27th of June last, to report "a resolve for the payment of the chaplain and other officers of the Convention," have duly considered the subject, and report the accompanying resolve.

For the Committee,

ISAAC LIVERMORE, *Chairman.*

*Resolved*, That there be paid out of the treasury of the Commonwealth, to the several persons whose names are borne on the accompanying list, for each and every day's service, as follows: to the two secretaries, ten dollars each; to the chaplain, three dollars; to the messenger, five dollars; to the two assistant messengers, three dollars each; to the door-keeper and three assistant door-keepers, three dollars each; to the postmaster three dollars; to the four pages, two dollars each: and the governor, by and with the advice and consent of the council, is hereby requested to draw his warrant on the treasurer for the same, on an order of this Convention.

List of officers embraced in the above resolve:

William S. Robinson, James T. Robinson, *Secretaries;* Warren Burton, *Chaplain;* Benjamin Stevens, *Messenger;* Issachar Fuller, Tilson Fuller, *Assistant Messengers;* Alexis Poole, *Door-Keeper;* David Murphy, William M. Wise, John A. Sargent, *Assistant Door-Keepers;* William Sayward, *Postmaster;* Joseph P. Dexter, Jr., Charles A. Murphy, James N. Tolman, Jr., Thaddeus Page, *Pages.*

*Negligence of Railroad Corporations.*

Mr. HALLETT, for Wilbraham, from the Committee appointed to consider the subject, made the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The Committee to whom was referred the order relating to remedies to the representatives of persons killed by the negligence or misconduct of railroad corporations, have considered the same, and report, that there should be added to the eleventh article of the Bill of Rights, the following clause:—

Where death is caused through negligence or misconduct, by means of railroads, steamboats, or public conveyances for hire, the same remedies shall be open in a suit at law, as for like injuries to the person resulting in disability and not in death.

B. F. HALLETT, *Chairman.*

The Report was referred to the Committee of the Whole, and ordered to be printed.

*The Late Member for Concord.*

On motion by Mr. BUTLER, of Lowell, it was

*Ordered*, That the Committee on the Pay Roll, make up the *per diem* of the late delegate from Concord, including the entire session.

*Judiciary.*

The next subject on the Orders of the Day, being the resolves in relation to the Judiciary, on motion by Mr. BUTLER, of Lowell, said resolves were laid upon the table for the present, for the purpose of going into Committee of the Whole, on the subject of Elections by Plurality.

On motion by Mr. BUTLER, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hillard, of Boston, in the chair, and proceeded to consider the resolves on the subject of

*Elections by Plurality and Majority.*

They were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary to the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law; but no such law providing that the governor, lieutenant-governor, secretary, treasurer, auditor, attorney-general, and representatives to the general court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and, if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above-named officers, except the representatives to the general court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been

voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be governor.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

Mr. BUTLER, of Lowell. I wish to make a farther amendment to the first resolve, which amendment, I take it, will pass without comment, and then I will explain the views of the Committee, in reporting the resolves they have. It will be observed, that in copying the resolves, an error has crept in. The resolve provides now, that in case of the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, there shall be no election for want of a majority vote, then the House of Representatives shall send up to the Senate, two out of the three persons who have the highest number of votes, if so many shall have been voted for, and then the Senate, shall, by *viva voce* vote, elect one who shall be governor; and there it stops. To make the resolve perfect, I propose to add to the end of the resolve the words, "or other officers to be thus elected."

Mr. WHEELER, of Lincoln. I should like to inquire of somebody, who knows better than I do, whether this Convention has not passed a resolution, that in case of a failure of an election of governor, he shall be chosen by the Senate and House of Representatives assembled in one House. If so, I cannot conceive of any necessity of this provision.

Mr. BUTLER, of Lowell. I would suggest, Mr. Chairman, that if the gentleman will allow this amendment to pass, the whole matter will be then open to discussion. My amendment is simply designed to perfect the resolve, and make it such as it was intended to be. It corrects verbal errors and grammatical inaccuracies which have crept in.

The question was taken upon Mr. Butler's amendment, and it was agreed to.

Mr. BUTLER. I propose another amendment, which is to change the word "which," where it last occurs in the first resolve, into the word "whom." The error is a grammatical one.

The amendment was adopted.

Mr. BUTLER. The Committee which reported these resolves, have stated briefly, in the report accompanying the resolves, the reasons which induced them to come to the conclusion to which they arrived. They believed that all those officers who are elected by general ticket, and who represent the whole people of the Commonwealth, either in the executive or other department of the Commonwealth, should be elected by a majority of the people—if it were possible to get such a vote. If it is not possible, that then a course as near that as can be, should be adopted, to wit: that the House should select, from a very limited number, which in practice, must be those who have very nearly an equal number of votes, two out of three of those, and send their names to the Senate. The Convention having put the Senate upon the basis of population, the Senate shall then, by a *viva voce* vote, select one of those persons to be governor, &c. They will then, in fact be elected by the representatives of the whole people, under a full sense of their responsibility.

[The copy for the remainder of Mr. Butler's speech was handed to the author for revision, and was not returned in season to be inserted in its proper place.]

Mr. WHEELER, of Lincoln. Some minutes ago, I called the attention of the Convention to the fact that they had already passed a resolve directing that the governor should be elected by joint ballot of the Senate and House of Representatives. I find in your official report that on May 9th, the following resolution was adopted:

*Resolved*, That it is expedient so to amend the Constitution as to provide that in case of a failure in the election of governor by the people, he shall be elected by the Senate and House of Representatives, by joint ballot.

Now, I am not able to see the propriety or expediency of adopting this resolve, providing that the governor shall be elected in the manner laid down in the first resolution reported by the Committee, when the Convention have already settled the question, so far as the governor is concerned, by a previous resolution.

My only object was to call the attention of the Convention to the fact. If gentlemen will take pains to look at the official report, they will find that this resolution passed on the 9th of May.

Mr. STEVENSON, of Boston. It is true, as has been stated by the chairman of the select Committee, (Mr. Butler,) that the question, whether the plurality or the majority rule shall determine the result in our elections, has already occupied a great deal of the time of this Convention, and has been somewhat elaborately discussed; and it may be presumption in me to suppose that any suggestions which I could make, would be the source of any additional light upon it. Still, having been, by the indulgence of the President, a member of the Committee to which this matter was referred, after that discussion; having participated in the deliberations of that Committee, and not being able to give my assent

to the conclusions to which they have come, I feel it my duty to ask the indulgence of the Committee, while I briefly state the reasons for my dissent.

It certainly, Mr. Chairman, would be unnecessary, in an assembly like this, convened for the purposes for which we are convened, to ask gentlemen not to allow their opinions to be warped, or their votes to be affected here, in any manner, by the light of the last election returns, or by the glimmer of what they may anticipate as the next. Still, it is not to be denied by any one, that, from the very fact that the subject which we are treating of, viz.: that of the election of the officers of the government, is one upon which party organizations are but too apt to expend their efforts. There is danger that we may find ourselves asking ourselves—although we might blush to ask another the question—what effect this or that rule would have upon the party with which we are associated? That is a danger against which every fair and high-minded gentleman is bound to arm himself. It is a danger, which, if not heeded, will mislead us in the very pursuit which it prompts; for parties are evanescent, while the rule, which we shall establish, is intended to be permanent.

If we will appreciate that danger, and arm ourselves against it, avoid it, or crush it, the Convention will not assent to the Report of this Committee as it stands. I supposed the purpose was to recommit this matter, after discussion, to see if some middle ground could not be found in reference to a matter, about which there was so much difference of opinion; although I cannot understand how it can be made to appear that, if the plurality rule be in derogation of the principles of democracy, when applied to one office, it can be shown to be consistent with the principles of democracy when applied to another office. Still, the Committee have undertaken to meet that difficulty, and have recommended a complex system of different rules for different offices; and the question with us is, is it wise to establish different rules for different cases. The other question that comes after that, if it should be answered in the affirmative, is, have the Committee made a proper application of these different rules to the different cases in this Report. It is proposed here, that a majority shall be insisted upon in the cases of all officers who are to be voted for by the whole people; in the case of county officers, and officers voted for in districts, that they shall be elected by plurality, and in the case of representatives, and town or city officers, that a majority shall be required on the first ballot, and that a plurality shall be sufficient on the second ballot. The first question that is to be answered by our vote in regard to this Report, is, is it wise to make a complex system? is there any reason why the rule should not be the same in the one case, as in the other? And if we come to the conclusion that there are reasons for making this difference, still, the chairman of the Committee is bound to answer the other question, whether he has made a proper application of the rule in this Report. I should give a negative answer to both of these propositions. In regard to the question, whether it is wise to establish a complex system here in Massachusetts, I would beg gentlemen to remember that the whole argument which was advanced here in Committee when the subject was before us upon a previous occasion, against the establishment of the plurality system, was, that it was in derogation of the principles of democracy, and in violation of the principle that the majority should rule. Changes were rung upon that proposition, until it appeared as if it would drown every suggestion of convenience and expediency. The convenience of the people must not be consulted by this body, for the reason that that principle must not be invaded. I would ask the chairman of the Committee; I would ask all the other members of the majority of the Committee, and all those who are influenced by the arguments which they present, whether, when they are constituting a legislature to consist of three branches, each having a negative upon the other two, it is not just as wrong to violate the asserted principle in regard to one of them, as it would be in regard to another of them, or to all of them? If it be a principle, what has become of it? Where has it gone? It is not here in this Report. How is it, that the principles of democracy are violated, when one of these three branches is filled by the votes of a plurality of the electors, and not violated when the other two branches of the same department of the government are filled by precisely the same means? How is it, that the asserted principle is *not* violated when the senators and representatives, who must enact or repeal, as the case may be, each law, before the governor will have the power to assent to or to veto it, are elected by a plurality, but *is* violated, when the branch possessing only a partial negative upon the other two, is elected in the same way?

I appeal to gentlemen, to know, upon the argument which has been presented here, over and over again, and the only argument which has been urged against the establishment of the plurality system here in Massachusetts, whether this Report is not based, either upon an utter repudiation of that argument, or else upon a willingness to sacrifice the asserted principle to

what is deemed to be the present condition of parties. Anti-democratic to elect a governor by a plurality of the votes of the people? Why not, then, anti-democratic to elect senators and representatives in the same way! Anti-republican to elect a secretary or treasurer of your Commonwealth by a plurality of votes cast? Why not, then, anti-republican to elect your selectmen, overseers of the poor, mayor and aldermen, in the same way! I cannot understand this.

Mr. BUTLER, of Lowell. I desire to call the gentleman's attention to the fact, that we elect both the secretary, treasurer, and chairman of the board of selectmen, by a majority.

Mr. STEVENSON. That is just exactly what I said. I say that the gentleman puts forward the proposition that it is contrary to the principles of republicanism and democracy, that the treasurer and secretary of the Commonwealth should be elected by a plurality of the people, and therefore insists upon requiring a majority; and yet, in the same paper, emanating from the same source, he proposes that your senators and representatives, your town officers, your city officers, your selectmen, mayor and aldermen, shall be elected by a vote of the plurality. I desire to know whether the time has arrived when it is unnecessary that senators, representatives, and town officers shall have their elections determined upon the principles of democracy or of republicanism, so long, only, as the governor of the Commonwealth has his election either determined upon those principles, or by an appeal to another tribunal, and that tribunal another branch of the government. I believe there are real and serious objections, which will present themselves to gentlemen here, against adopting this complex system, other than the fact, that it is in violation of the principle which has been asserted here, in regard to all the other officers, excepting state officers. We have not a case here, where we can make a partial experiment by applying the rule to some officers, with the intention of making it general, if we find it works well and gives satisfaction to the people. If we were a legislature, with annual sessions, that would be a course which we might adopt, and perhaps it would be a wise one. I hope that we shall not adopt a complex system here, but, that we shall establish the same rule for all the officers whose election we deem to be important. If it is to be determined otherwise, and we are bent upon an arrangement by which some officers are to have their elections determined by one rule, and other officers by another, I ask the chairman of the Committee to answer the question, whether he has made a proper application of these different rules? Granting, then, that you may make a difference in different cases, is it wise, still to insist upon a majority in relation to those officers who are to be voted for by the whole people, and to consent to the plurality, in cases where the constituency is smaller? What are the considerations which ought to determine the offices concerning which you should insist upon one or the other rule? Shall it depend upon the number of persons who constitute the constituency? Shall it depend upon the importance of the office to be filled? Shall it depend upon the degree of inconvenience and expense attending repeated trials? Shall it depend upon the opportunities which the electors may be supposed to have, of knowing each others' views, and so of reconciling differences of opinion as to candidates? Or are they to be determined upon by lot, and the result to be called a compromise? I submit, if any one of these considerations ought to weigh, that they have been utterly disregarded by the Committee to whom this matter was referred, and from whom this Report comes. If these considerations ought to have any influence, and if you are determined to insist on a majority in some cases, and to be satisfied with a plurality in other cases, I submit, that it is the duty of this Committee to shift this Report, end for end, and to make your governor, and the other officers, for whom the whole people are to vote, eligible by a plurality, and to insist still, upon a majority in your local elections and smaller constituencies. If we are going to make a difference, let us be able to give a reason for it which cannot be traced by any lines to party considerations. If we desire to make a difference, let us be able to give such reasons as the Convention ought to give when it makes propositions concerning the Constitution. Of all the officers who should be elected by a plurality, those who are to be voted for by the whole people, on a general ticket, are the ones. There is a palpable distinction, which might have been drawn in that direction; and he who should have drawn it, might have been moved by some regard for the will of the people. That distinction might have been justified, on the ground that it admitted the plurality in those cases in which repeated trials could not be had; and insisted upon a majority in those cases in which repeated trials could be had; thus leaving the result, in both cases, in the power of the people. This is a desirable object; and, therefore, I say, change this Report, end for end. It is exactly wrong, now. The right and left boots are put each upon the wrong foot. Do not gentlemen see, that while they are crying out that they desire to give the election of officers to the people, they are consenting to a scheme here which

will take these elections out of their hands, and give them to the legislature? In every conceivable case where it will, in practice, make any difference whether the Constitution shall provide a majority rule or a plurality rule, do not gentlemen see, that the majority rule is nothing but a requirement of that which cannot be insisted on?

Take your governor, for instance. The largeness of the constituency—the greater inconvenience and expense of repeated trials to the people—the necessity that the office should be filled—the lesser opportunities, which the electors have, of comparing opinions, and reconciling differences of opinion as to candidates, all point to the same conclusion; and yet the proposition of the Committee is to leave these officers to be elected by a majority only, after they have abandoned the whole principle upon which they oppose plurality. These evils are so obvious in regard to general elections by the people, as the matter now stands, that in cases of general elections, where the whole people are to vote, nobody proposes repeated trials; and so, holding on to a majority rule, we are driven to a greater evil than them all, and that is, to an appeal from the people to a single branch of the government; and that is called democracy! I do not desire to appeal from the people to a branch of the government, and he is a queer democrat who does. I do not desire to run the risk of seeing, at a future day, high offices of the government offset, one against another, and traded for. I do not desire to see the judgment of the governor of this Commonwealth hampered, when any bill is presented to him, by the fact, that it has received the assent and favor of those to whom he is indebted for his place. I do not desire to see the appointing power obtained, perhaps, by previous promises as to the exercise of it in individual cases. I do desire to see the highest officer of your government holding his commission from the people, in the best form in which it can be given, and not from any other branch of the government. The more independent you shall make such officers of your government, the better will the government be administered. I do not understand how it is, that gentlemen who think it would be anti-republican and anti-democratic to permit the governor to be elected by a plurality of the votes cast, are quite willing to transfer all power from the people to a body, a majority of which shall have been elected by a minority of the people, and to confer upon them the power to elect as governor that individual, who, perhaps, received less than a plurality of the votes at the last election. I think it was the gentleman from North Brookfield, (Mr. Walker,) whom I do not now see in his seat, who said, that the only question involved was, "Where shall the sovereignty reside?" Be it so. Those who ask you to establish a system of elections by plurality, propose that it shall reside in the people, and in the people alone; while those who insist upon a majority, and make no provision for repeated trials, propose that it shall reside in the people conditionally, up to a certain point, and then that it shall be transferred from the people to the legislature. That, I understand, to be the difference between the two in regard to the question, where the sovereignty is to reside. I may be excused for referring to the remarks of the gentleman from North Brookfield, in his absence, because his is the only argument, which I was fortunate enough to hear on that side of the question. That gentleman told us that the establishment of the plurality system here, in the election of officers under a general ticket, would "debar the people from the right of deciding by a majority." That single proposition, stated and considered, will expose the fallacy which runs through, and is the only life-blood of the whole of this argument. Debar the people from the right of deciding by a majority. Try it, and establish your plurality system; and does not the right remain then, just as much as it exists now? Let the majority vote for any candidate whom they desire to elect, and will he not be elected, although you may have ten thousand plurality systems? How can the gentleman argue that you debar the people from a right, when you leave in their hands, intact, the power to exercise that right, in every conceivable case. Gentlemen have all along spoken as if the proposition were to give to the minority power over an existing majority. Gentlemen have argued this question just as if the proposition were that the lesser number of votes should prevail over the greater number of votes. And there is the whole difficulty in this matter. Now, using the words plurality, majority, and minority, in the sense in which they are generally received, a minority and a majority can exist in the same body at the same time; and the majority ought to govern, and the majority will govern. But a majority and a plurality cannot *be* at the same time. If a majority exist, it is an enhanced plurality; and therefore, whenever, under the proposed change, a plurality shall prevail, it will be because no majority exists.

And therefore, whenever you shall establish this rule, and it shall prevail at an election, there will be no invasion of the principle that the majority should rule. Shall not a majority rule? Yes, Sir. But the difficulty is, that gentlemen,

when they are discussing this, and when they say that we propose to give to a plurality the power over a majority, are comparing things, both of which cannot exist, at the same time, in the same body. One is an enhancement of the other, and they cannot both be there at the same time, to be put in opposition, one to the other. Shall not the majority rule? Yes, certainly, when a majority exists. But the great American principle I take to be this, when properly stated: the majority shall have the power to rule. And, Sir, the establishment of the plurality system does no violence to that principle; for it leaves the power to rule still with the majority, as certainly as it is there now.

The gentlemen who insist upon a majority at an election, ought to remember that they have no power of compelling the existence of a majority. They seem to forget that political rights are individual concerns; that political powers are individual rights, the whole value of which depends upon their effect upon the individual himself; the security of *his* person, the promotion of *his* happiness, the protection of *his* property—these are the purposes of government itself. The great difficulty comes from the inconsistency between individual freedom in the exercise of the elective franchise, and the existence of power anywhere to compel a majority; the existence of power anywhere to compel more than half of those who vote for candidates, to vote for one candidate. Now, Sir, a duty is to be performed, an office is to be filled, an officer is to be elected; you hold on to the majority rule with no provision for repeated trials, on the part of the people; and as long as you leave uninvaded the individual's right of exercising the elective franchise, you have no power to compel the existence of a majority, and therefore you have got to do one of two things: You must either consent that the duty shall remain unperformed, and the office shall not be filled, or you must provide some other mode of electing an officer in this Commonwealth than by the votes of the people. Some other mode, if you insist upon a majority to elect an officer, than by the votes of the people, you must provide. And the question, —and the whole question is, in that contingency, a majority failing to exist—which mode is the preferable one, an appeal from the people to the legislature, or to leave the power still in the hands of the people, to be exerted by means of the plurality of the votes which shall be cast at one time? and that is the whole of it. The question here is not whether you prefer that your governor should be chosen by a plurality or by a majority; but whether, a majority not existing, you prefer that he should be elected by a plurality of the people, or by the legislature? I prefer the former, because it will make it absolutely certain that the election of governor and all general officers of the State, shall be as nearly in accordance with the public will, as the condition of things will permit, consistently with the right in each individual to cast his vote as he himself may see fit, independently of the government, or of any party. Whereas, if you adopt the Report of the Committee as it stands, cases will arise, as cases already have arisen, where, through the instrumentality of mere party arrangements, he who received the lesser number of votes from the people, is put into the executive chair to the exclusion of him who received the greater number of the votes of the people.

The basis of representation which has been almost agreed upon by this Convention, furnishes a new reason why it is our duty to give to the people of Massachusetts an opportunity of saying whether or not they will insist upon holding in their own hands, without giving it up to a legislature, the election of him who shall fill the executive chair. The main, and the real objection to that basis, which we have agreed upon, is the inequality of influence over the legislation of the State, which is to reside in different citizens in different parts of this Commonwealth. That inequality is acknowledged. But we are told that we must submit to it, because town lines must not be disregarded in Massachusetts. Such a reason as that cannot be given why the same inequality of the power, held by different men in different parts of Massachusetts, should exist in relation to him who shall fill the executive chair. But, if you adopt this Report of the Committee, you carry that same injustice into the council-chamber, without the same palliation, in all cases, where your constitutional provision will operate at all. You give to an assembly, established upon an unequal basis, the power of choosing the governor, whose concurrence with them (and it ought to be an independent concurrence) is essential to their own exercise of power.

You make the same unequal division of political power, in regard to the executive, without a reason for it, which you make in regard to the House of Representatives, with a reason for it, which reason alone affords any justification of it. But, it is said that in regard to governor, we must preserve the principle that the majority shall rule. Look at it, and see what kind of a preservation of that principle is proposed here by the Committee. You are to appeal from the people to a tribunal, the majority of the members of which, are the representatives of an acknowledged minority of the people. Farther than this, your

provision compels that tribunal to make its selection from persons who have just failed to secure to themselves a majority of the votes of the people; and this is called preserving the majority principle!

The first resolve embodies the Committee's mode of electing governor, and other officers in accordance with this majority principle, as it is called. See how. The people vote once. There are three candidates—one has half of the votes, one a third of the votes, and one a sixth of the votes. One of the three must be governor; but, inasmuch as the majority principle must be preserved, he, whom half of the people desire, must be no nearer to the chair than he whom one-sixth of the people desire; there the people's power ends. In its exercise, one-sixth of the votes have had exactly the same force and effect as one-half of the votes. Then the selection of two out of the three is given to the representatives of one-third of the people, themselves elected by a plurality of their own constituents; and then, as a finishing touch in the process of preserving the principle that the majority of the people should elect the governor of the Commonwealth, the Senate, a body, of which no one member may have been chosen by a majority, is to determine the election. And so, with no single agency to which a majority has given its assent, the governor is to be elected in accordance with the rule, that the majority alone shall have the power to decide who he shall be! *Lucus a non lucendo!* It is nothing more nor less than this: It is putting it into the power of the House of Representatives to substitute, not a plurality rule for a majority rule, but a minority rule for a plurality rule, and that is the whole of it. The whole power conferred upon the House of Representatives, their choice being limited to three persons, is this, and nothing more than this: to determine that he who shall have received the highest number of the votes of the people, shall not be governor, but that he who shall have a lesser number of those votes shall be governor.

I know it is said, that those who favor the plurality rule in elections, and opposed the basis which has been agreed upon, on the ground that it put power into the hands of a minority of the people, expose themselves to a charge of inconsistency. But it is not so. There are clear distinctions between the two; as palpable as those between midnight and noonday. In the two things to be acted on, viz.: the election of officers, or the constitution of the body which shall enact the laws, the citizen occupies very different positions; answers, by his vote, very different questions; exercises, by that vote, very different powers. In the first, the election of officers, he votes for whom he chooses—the Constitution knows no candidates—the question which is propounded to him, and which he answers by his vote, is not, "shall or shall not A B fill the office?" but the question is, "who shall fill the office?" The power, which he exercises, is not necessarily exerted, either in aid of, or in direct opposition to, the power exercised at the same time by each other voter; but it may operate as a mere disturbing force, absolutely impeding, and perhaps disarming the power of all others. So that a factious spirit, indulged in by a few, tends to preventing the many from being represented in the government under which they live. I, for one, desire to take out of the hands of the few, this power over the many. But, in the enactment of laws, the questions propounded, and which are to be answered by votes, admit of no response, excepting an absolutely affirmative, or an absolutely negative, one. Shall this law be enacted—yes or no? Shall this law be repealed—yes or no? So that the power which each exercises by his vote, must, (unlike votes at an election,) necessarily be exerted, either in the same direction with, or in direct opposition to, the power exerted at the same time by each other vote, and cannot be made to operate as a mere disturbing force.

I am willing that, at each election, a plurality should elect the officer; I am unwilling to confer upon a minority of the people, the power of making the laws, in opposition to the will of a majority of the people; and some gentlemen think that to be an inconsistency. To reach that conclusion, they must leap a chasm broader than logic can build a bridge for. When you provide that a plurality may elect, do you thereby provide that a majority shall not elect? Will not a majority elect, wherever a majority shall see fit to elect? Do you confer upon the minority the power to govern the majority? Do you take power from the majority of your people, and confer it upon a minority of your people? Far from it and otherwise. You leave the power with the majority, as certainly as it is there now, and you take from the minority the power of preventing elections.

Now, Sir, how is it with the basis for the House of Representatives? Ask yourself the same questions concerning the two, and see if you will not be constrained to give exactly opposite answers. Do you provide that the majority shall not have the power to govern? By the basis, yes. By the plurality, no.

Do you confer upon different citizens, different degrees of political power? By the basis, yes.

By the plurality, no. Do you give to each man's vote an equal weight, in the ballot-box? By the plurality, yes. By the basis, no.

I cannot think that he who votes for one proposition, and against another proposition to which such adverse answers can be truly given to the same questions, need feel much embarrassed by any whispers of inconsistency. In the one you take power from the majority, and confer it upon the minority; therefore I oppose it. In the other you do no such thing, and so I assent to it.

What is the exact measure of power which each citizen ought to possess, either in an election, or in deciding what the laws shall be, under which he is to live? Exactly that which each other citizen possesses. No more and no less. He who asks for more, is no democrat, though he may have worn the word threadbare by the use of it with his tongue. He who will consent to less, is not fit for a republican, however much he may congratulate himself that he lives under no other form of government. Each citizen's proper measure of power is exactly that which each other citizen possesses. What is the instrumentality through which that power is to be exercised? The vote. The individual's power by the individual's vote. And, in determining the mode in which that power shall be exerted, if we determine that each vote cast shall carry with it the same force, which each other vote carries with it, we shall determine justly. If otherwise, we shall determine unjustly. Let us listen to the clear voice of justice; that most god-like capability of man; that central light of the moral universe; that sun, which all the other virtues revolve around, and are illumined by—whose central force is necessary to keep each other virtue from wandering into the orbit of its kindred vice.

No system can be just which will not square with this rule, equal power in each vote. Now, when you change to a plurality, do you invade this rule? Does it not leave each individual's power exactly equal to each other individual's power? Each vote, the silent expression of the will of him who casts it, tends with exactly equal force to the accomplishment of his wishes; carries with it exactly the same weight, not varying by the pressure of a single particle of impalpable dust; while in the other case, the basis of representation is an absolute negation of the same rule. It fails to recognize the existence of individual power, looking only to the power of associations; constructing foundations so varying, that the few, standing on one, may defy the many, standing on another; putting into different mens' hands different instrumentalities; calling each a vote, but endowing different votes with different degrees of power. That is injustice. Because whatever of excess it confers upon one citizen, it takes from another, and men in Massachusetts cease to be equal.

[The time allowed by the rule adopted by the Convention, having expired, Mr. Stevenson did not finish his argument.]

Mr. DAVIS, of Plymouth. I rise to make an inquiry whether the resolves, as reported by the Committee, are all under consideration, or whether only the first is now before the Committee?

The CHAIRMAN. The Chair understands that they are all under consideration, so far as to allow of general debate upon them.

Mr. DAVIS. If it is in order, I will move to amend the third resolution by striking out all after the word "election," in the third line.

The CHAIRMAN. The resolve will then read as follows:—

*Resolved*, That in the election of representatives to the general court, a majority of all the votes given in, shall be necessary to an election.

Mr. DAVIS. I do not propose to argue, at any length, the amendment I have proposed, or to give the reasons why I advocate it; but it seems to me, that in one remark, at least, of the gentleman from Boston, (Mr. Stevenson,) I can agree with him, and that is with regard to the town elections. I differ from him in believing that we should, as far as possible, retain the doctrine, and, as I maintain it, the principle of the majority system. If I have understood correctly the position of many gentlemen on this floor, who are in favor of town representation, I understood them to base their arguments in favor of town representation, to a very great extent, and almost solely, upon the ground that it was necessary in order to preserve these small democracies and municipalities intact. It was said that they were the only pure democracies in the world. I have only to say, that I, for one, am in favor of keeping these democracies pure in the small towns; and I therefore propose this amendment. It seems to me, that if we are to retain the majority system anywhere, we should do it in these small towns, these "pure democracies," as they are termed, and then we shall, to that extent, preserve, and teach, the principles upon which a popular government is founded.

There is another reason why we should not make the election of a representative to the general court final, upon a second trial, and why we should preserve the majority system, so far as that election is concerned; and that is, that in the smaller towns the people are better able, from

their knowledge of their neighbors, and of the candidate who is selected, to agree upon some one, after one or two trials have been had. There does not, in this case, seem to be the necessity for the plurality rule, which may exist in other cases; and the Committee, in giving the reasons for their Report, expressly declare, that there is not the same necessity for preserving the plurality system, in the election of a representative, that there is in the election of officers from a more extended territory. Since this Report was made by the Committee, the Convention have decided upon a system of town representation; and, therefore, there is not that same necessity for adopting the plurality system, with regard to the election of representatives, that their might have been if the district system had been adopted. If the members of the Committee will turn to the second page of the Report of the Committee who offered this series of resolutions, they will find, that when the Committee speak of the election of representatives in towns, by plurality, they are obliged to resort to an entirely different reason from that which they give in the case of the election of other officers. They say:—

"To prevent a too frequent recurrence of elections, and the necessity of trials on subsequent days, when bodies as large as counties and districts fail to elect, for all county and district officers, a plurality rule is provided. From a desire that the government may be in fact, what it is in theory, a government of a majority, and to give an opportunity for the exercise of the 'sober second thought,' by the electors, that rule is proposed upon the first ballot, in the election of representatives to the general court."

And here they bring in a new reason:—

"Still, that differences of political or other opinions may not operate, either to hinder a full representation, or to protract town meetings to such extent as to subject them to extraneous influences, a plurality is permitted to elect on the second ballot."

Gentlemen will find, that when an election of an officer who is to represent a large extent of territory is proposed, the reason for resorting to a plurality is, that it is not easy to meet for a second election; and then, when they come to the election of those who are to represent a smaller territory, they give another reason; and I suggest, that I think that the other reason is not entitled to very much weight, for a majority may always elect, upon a second trial, if they *desire* to prevent a failure of representation.

Mr. EDWARDS, of Southampton. Having been placed on the first Committee to which this subject was originally referred, I have given it some attention. I do not mean to speak long on the subject, for I would not make a long speech if I could. But as I felt this to be a somewhat important subject, when the proposition for calling a Convention was first agitated, and having turned my attention to it, I wish to say, that for many years I have been in favor of the plurality system in all our elections. I was in favor of it in the Committee of which the gentleman from Fall River, (Mr. Hooper,) is chairman, and eleven out of thirteen members of that Committee appeared to be decidedly in favor of the plurality system. I have seen in the elections in our towns and counties, great evils resulting from the majority principle. It has caused our town meetings to be subjects of ridicule, so frequently have they been called.

It seems that a large proportion of this Convention are not ready to adopt the plurality system in its fullest extent; and therefore, in this age of compromises, a compromise has been presented, and, in the language of the gentleman from Boston, upon another subject, I am ready and willing to take the best project presented, if it is not fully up to my views. Why did we, in past years, adopt the plurality system in the second trial for an election of members of congress? Because the people did not appear to be ready to adopt it upon the first trial. We have, heretofore, in many districts, been called upon from three to nineteen times to elect members of congress. The people of Massachusetts are slow to adopt any innovation; and that may be a credit to them; we do not like to give up our town representation; we do not like to come at once to the adoption of the plurality system in elections. We are attached to these principles, which have been long established and acted upon. I am entirely opposed to the amendment which is proposed. I wish to elect our representatives on the first day that we meet. It is, in many towns, extremely difficult to elect at all, and an unequal representation has consequently been the order of the day in Massachusetts.

I should regret, extremely, to be unable to elect a representative on the second ballot, as is proposed by the Committee; if the majority principle is to be the guide in the first ballot, the plurality system should be in the second. For my own part, I am ready to take it upon the first ballot; but as it seems that we must compromise the matter, I am willing to vote for the proposition of the Committee. Those who are conversant with the management of town affairs, and the election of town officers, &c., know that three or four days is often required for the election of a board of selectmen; this has been the case in

many of the small towns, and they have been wishing, for a long time, that the plurality principle could be introduced into these elections. I do not regard this matter as affecting party. When I came here, it was not with the idea of doing anything for the benefit of any particular party, and to acquire any party advantage whatever; and, to my surprise, I found myself surrounded by friends of the plurality principle, whom I did not expect to find on that side. For years past, in the legislature, I have sustained the plurality principle by my vote; and I now found myself surrounded by new friends. I do not stop to inquire what is to be the effect of this on party; I do not look to the present good of Massachusetts merely. I have arrived at that age when I desire the permanent good of the Commonwealth, and not the present success of any party. I desire that those who are to follow me, should have as good a Constitution as we can possibly provide for them. I do not expect or desire anything for myself, but I want to present to the people as perfect a system as we can, upon this, as well as all other subjects that come before us. For these reasons, I shall vote against the amendment to the third resolution, and hope that it will not be adopted.

Mr. FROTHINGHAM, of Charlestown. I hope that the amendment of the gentleman opposite will not prevail, for I desire that we should, at least, retain the plurality principle for our representatives. For one, Sir, I shall go for it, and for as much of it as I can get; and for the reason that has been urged so often, and so elaborately, and so well, upon this floor. I concur almost entirely in what has been said by the gentleman who last spoke; and I will say, that the particular reason why I wish the amendment not to prevail is, that the evil of the majority principle, or the inconvenience of it—for I will not say that it is a bad principle in theory—has been most sensibly felt in the city which I have, in part, the honor to represent here. For the last ten years, we have hardly been able to get our representation upon the floor of the legislature. I think there has been but once, in the whole round of ten years, when we have had a full delegation. That is the way in which the majority principle has worked in Charlestown; and this being the case, I appeal to the gentleman who offered the last amendment, whether it is not reasonable to expect that the people of that city, are strongly in favor of the plurality principle, in order to secure what all parties want, and what they all ought to strive for—a representation of that city upon the floor of the legislature. Sir, it is this evil of non-representation which lies at the bottom of the whole matter; it goes deeper than all party considerations. When you take a representative away from the legislature, you deprive the people whom he represents of their legitimate voice; and a system which works so as to deprive a city or a town, for so large a portion of their time, of their full voice in the legislature, is not the best system that we can obtain. I believe that when you go over the history of our legislature for the last ten, fifteen, or twenty years, you will find that this evil of non-representation has prevailed, to a greater or less extent, over the whole of the Commonwealth. Therefore, in advocating the plurality principle for the city of Charlestown, I advocate it for every town, and for every city in the Commonwealth. While I am up, and not wishing to go into a speech upon this matter, I will venture to make a suggestion which occurs to me in relation to the wording of the resolution, and ask the chairman of the Committee whether it would not be well to alter the phraseology, so that the towns, if they chose it, could elect their representatives on the first ballot, by the plurality principle, instead of waiting until the second. Of course, as relates to the cities, it will make no difference; but this suggestion is made in accordance with the idea of a friend near me, that it may be more convenient for the towns, and more desirable, to have the resolution worded in that way. I do not, myself, propose any amendment to carry out that object; but I will conclude by expressing my hope that the amendment which was offered by the gentleman from Plymouth, will not prevail.

Mr. SCHOULER moved to amend the first resolution by striking out all after the word "resolved," and inserting, in lieu thereof, the following:—

That it is expedient to provide, in the Constitution, that in the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, the person having the largest number of votes shall be deemed and taken to be elected.

The CHAIRMAN. The Chair can receive and announce the amendment; but there is an amendment to the third resolution now pending before the Committee.

Mr. SCHOULER. As this is an amendment to the first resolution, I suppose it will be first in order. I do not intend to occupy any time in discussing this amendment, but taking the Report of the Committee now under consideration, and the Report of the Committee in relation to the calling of this Convention, it seems to me that there is a tremendous clashing between them. I

will read the seventh reason assigned for the calling of this Convention, which will be better than anything that I could say upon the subject. That is as follows:—

"7. The present cumbersome, formal mode of organizing the government, we submit, should be abolished. Eight or ten days are now usually occupied in this organization, which is nothing less than an annual waste of six or eight thousand dollars of the people's money. The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil. These changes, with a few other slight modifications of the Constitution, in the same direction, especially the establishment of a board of men to count the votes, declare the result, and notify the persons elected, would enable the legislature to organize the government, and be ready to proceed with the business of the session, in two, or, at the longest, in three days. This change alone, would, in the course of ten years, nearly, or quite defray the whole expense of the Convention."

Now, Sir, if we adopt the Report of the Committee, now under consideration, we shall be leaving this present cumbersome, formal, and expensive mode, exactly where it stands in the Constitution. It seems to me, Sir, as was said by my colleague, this morning, that those officers who are made elective, and for whom the whole people of the Commonwealth are called upon to vote, should be elected by pluralities, so as to do away with all this trouble. If we elect them by majorities, we shall be keeping up this formal and cumbersome mode, which, as this document tells us, is a waste of some six or eight thousand dollars of the people's money, annually.

Mr. HALLETT. I understand, that there are two propositions now before the Committee: one is to adopt an amendment to the first resolution, by applying the plurality rule to it; and the other, is to amend the third resolution, so as to require a majority to elect the representatives from the towns. I understand, that these two amendments are now pending. I propose to say a very few words, in order that I may stand consistently upon the record. When that question was under discussion, by this body, on a former occasion, I took the opportunity to express my opinion, that the majority principle was the only true rule—that I knew of no other sound, republican rule—but that, if it was a question of expediency, we might submit to the people the question upon the plurality and the majority, so that they could have an opportunity to decide upon this question, and that the plurality principle might be applied to certain officers, while we should require a majority, as applicable to other officers; and I went so far as to say—and I stand upon the same position now—that it is an exception to the principle that keeps the government in the hands of the majority. Nevertheless, I should be willing to submit some proposition to the people, in order that they might pass upon this question of plurality. But, Sir, as regards the amendment proposed by the gentleman from Plymouth, I feel bound to say, that that is the last fortress of the majority principle which I am willing to surrender. While I do not propose to make a point of issue, in regard to the other portion of the Report—taking the majority principle, in certain cases, and the plurality rule, in other cases—I want to present to this Committee the single consideration, that we ought not, in our Constitution, make any change in the present mode of electing representatives. The legislature has no power in the Constitution to touch it. The Constitution, Sir, says nothing about it. For two hundred years, in this Commonwealth, we have never heard in its history, that a representative in general court, was ever chosen by less than a majority of the community voting for him. There has not been a word put into any Constitution about it. It was not put in by the framers of the Constitution, in 1780; it was not put in by the amendments of 1820, and the legislature have never acted upon it. Now I should greatly prefer one of two things: either to leave it out of our amendments to the Constitution altogether, by striking out the whole of that provision which relates to representatives, or give authority to the legislature to pass a plurality law, if the towns want it, or else to amend it, so as to require a majority, by the terms of the Constitution. I am content to go so far as to leave the subject to the legislature; but I am not content to go so far as to say, as a fundamental law of this Commonwealth, unchangeable, except in the mode of changing the fundamental law, that the towns of this Commonwealth may elect representatives by minorities. That is precisely the same thing; for to say that they may elect by the plurality system, is to say that a minority may elect. I go upon principle, in regard to this matter. I want the towns to reflect, whether we can take this step, and hereafter preserve our principles, in regard to town representation. If there is any principle in town representation, it is this: that towns are distinct communities in the Commonwealth, which communities are entitled to representation—not merely, that individuals as parts of the whole population, are entitled to representation—

but that town communities are entitled to be represented, through the individuals who compose these respective communities. That is the only principle upon which I can act, in advocating town representation; and there I can stand. Now, if you give to these communities the right to be represented in one branch of the general court, is it safe to say, that these communities may be represented here by a minority? I have great doubts upon this matter, because, then it comes to this point: you may put your House of Representatives in the hands, in the first place, of of a minority of the whole people, by the mode of a representation of communities, instead of that based upon the aggregate population; and then, you go one step farther, and put these communities into the hands of a minority of the communities, so that it is a minority of a minority that will elect your representatives, for a term of years, until the Constitution is changed, and control this branch of the legislature. It is true—and therefore our town representation principle is sound—that the House of Representatives, so apportioned, does not control the government, and if you preserve the other departments of the government in the hands of a majority, that may so far balance it, and the government will be only of a majority. But, I think that we should preserve, at least, the great principle in regard to the election of representatives, that they should be chosen by a majority, and nothing less. That renders this portion of the Report of the Committee especially important, as a matter of principle.

Now, as it regards the question of expediency in town representation, if I am right in this principle of government, that we must have a majority in government to be republican, the practicability of electing by majorities is very different in town elections from what it is in elections at large. In the first place, the towns may continue to try to elect representatives, and they may be allowed to try as they did under the old law. At all events, they continue to have trials for the election of representatives. But, Sir, a town has a right to be represented, or not represented, as it pleases. That is an ancient town right; and I hold that if the people cannot agree as to a representation by a majority, it is just as much a vote determining not be represented, as if it were placed upon the record not to send. But herein you propose that a town, by the operation of the plurality, in effect, shall be represented, whether it will or not. I very much question if that is not introducing a principle more restrictive of town rights than if we limited their representation, because you allow a minority to compel a town to be represented, when a majority of the people of that town are opposed to being represented by the person who is chosen. A few voters will go into the town meeting, who get there first, and vote to send, or begin to ballot, when three-fourths of the voters will not be represented in the general vote, or in the choice. So a minority may dissolve the meeting. You may, nevertheless, call a meeting by the selectmen, at the proper period in November, and then have an election, by a minority vote; and if you have four or five parties in the field, a plurality, consisting of a minority of one-fourth, may elect a representative and send him to the general court, against the majority who vote, and against the corporate will of the town, not to be represented. I do not wish to place the towns in that attitude. If I were going to vote in this matter merely as a politician, so as to cull a plurality party out of all the three parties in the Commonwealth, I would go for this; and it is a strong temptation to do so, because I confess I want to get rid of that third party. I believe that they will do much better for themselves and for their country, by being fused into the other two parties, according to their individualities, than by undertaking any longer to keep house themselves as a party; and I will say, that those who carry this plurality doctrine out, in the choice of all officers, must not blame us who opposed it, if we hold the knife which they have whetted, to their throats. But I stand here, upon the general principle, that I consider these communities of towns as the elements of House Representation, and being the elements of that representation, I cannot consistently vote for sending their representatives here by a minority. I hope, therefore, as it was only my purpose to set myself right on this question, that this amendment, as regards the third resolve, will be adopted, so that it will read, "that in the election of representatives to the general court, a majority of all the votes given in shall be necessary for an election," and if that does not prevail, then, at least, let the amendment which has been suggested, be adopted. You ought to have an election by plurality at the first trial, at all events, otherwise you say that those who are to elect your representatives shall be men who can afford to ride to the polls, and not those who have to walk, and cannot well lose a day's work; for that is all the difference, a difference between men of property in the villages, and a sparse population of farmers and laborers, scattered in the rural sections. Almost every man can and will go to the polls on the first day, when a trial is to be made; but the laboring man cannot afford to lose his dollar each day, for four or five times, unless

it should happen to be on some great and exciting occasion. If you will have a plurality, therefore, in town representation, let it apply to the first, and not to the second trial. My judgment is that you had better not put this provision in at all, but keep the majority as it now stands, and leave it to the legislature to decide whether the towns want the plurality rule, and if they really do, let them have it.

Mr. FOSTER, of Charlemont. I am in favor of the amendment of the gentleman from Plymouth. My constituents have been unrepresented for the last two years because they could not agree upon the man to be sent, and when I was at home the other day I told them that I should still sustain the majority principle on the subject, and they consented still to be without representation; for they considered the majority principle a safe one. I told them that there was a special reason why I should support this principle, and that is: that we are likely to have a large House of Representatives and I would be very willing to have the House thinned out a little by these very failures to elect, and that that was one of the strong motives why I am so much in favor of the majority system.

Mr. STETSON, of Braintree. I do not intend to detain the Convention. When I hear my friend oppose what I consider a democratic principle, and a democratic rule, I am induced to address the Convention. I believe, Sir, that the majority principle, as it now exists in the State, is, in fact, a rule by which the very smallest minority rules the majority. That is the fact; and I think that some provision should be made in the Constitution by which this may be overcome, or set aside, in some way or other; and I know of no way unless we adopt what is called the plurality system. I believe that the system of plurality is the most just and equal to the majority of all parties, and that the rule itself, nine times out of ten, results in giving a fair majority of the people in favor of such candidates as are brought forward for election. And is it not a fact that under the majority rule, you find the little party will govern in almost all cases? Where there are two parties, the Whig and the Democratic,—or the Free Democratic and the Democratic,—where the two parties are nearly balanced, and we say that the majority shall rule, one or the other of these parties are bound to coalesce if they wish to choose. And what is the result? By a coalition one party will succeed; but if each party stands upon his own right, independently of the others, no person can be chosen. Now that is the rule. I hope the Convention will adopt the Report of the Committee. I am willing to go further, and think the plurality rule should go as far as it can be made to go; that we should elect all officers under the State government by a plurality vote. That is the true doctrine, and I can well conceive why my friend for Wilbraham, (Mr. Hallett,) is so loath to concede that even a majority should rule; because I do not know but he is one of the fathers of the two-thirds rule, contending that two-thirds of a party should be brought to bear upon a single object, or else no one can be chosen.

Now the two-thirds rule is one of the most destructive inventions that ever existed; and I would appeal to gentlemen, whether that rule does not throw out all the men who are the most deserving of office? I say, that by this iron rule, the most valuable men are thrown aside. I can conceive no other reason why my friend is so loath to adopt the Report of the Committee, except that he wants that iron rule to continue. Now, I am sorry to say, we had some long speeches made, on a former occasion, upon the subject; that those who have always supported the democratic principles, have come out and said, here upon this floor—and I believe my friend on the right is among the number—that the plurality principle tends to destroy the very foundation of the government.

Sir, I am sometimes called radical; but if this plurality rule is a radical measure, then I am a radical. I do not believe but that the principle itself produces the effect which we all desire; that it develops the true principles of the majority. I will venture to say, Sir, that two-thirds of all the legal voters in the State of Massachusetts are among the working classes. One of the principles of democracy, I believe, is to relieve the masses from the oppressions of wealth; and I contend that the majority rule, as it operates under present circumstances, is one of an oppressive character. The men upon whom the burdens of taxation fall most heavily, are the working men —men who are often compelled to meet, from time to time, and from day to day, at the polls to vote, or relinquish their right of being represented. And I would appeal to every member of the Convention if he does not know, in every election, after the first or second day, who are the parties who do not appear at the polls? Is it not the laboring classes, the rank and file of the party? The consequence is, that we cannot get even a fair plurality of the voters of the towns when an election takes place. Persons are thus voted into office by a very small number of voters. I have myself been voted into the House of Representatives, on a majority vote, by a less number than would have constituted a plurality

vote on the first day of election. And why is it that we suffer this thing to remain on the statute book, year after year, without bringing the matter forward, and putting it to the people what they desire; that is what the laboring classes want, that we should adopt this plurality question. Sir, during the sittings of this Convention, I have not seen a Democrat among my constituency, or among any other, who does not believe that the people desire, and want this principle of plurality adopted. They desire it for the best of all reasons in the world—that they may relieve themselves from the oppressive burden which this majority rule inflicts upon them.

I contend, Sir, that this principle is one of Democratic birth; that it has received the support of Democrats in all the States of the Union, and that it has been advocated in an address to the people of the Commonwealth. But enough has been said upon that point. The people know it; they understand it; and they expect to have the question put to them upon this plurality mode of election. They ask for it; and, I believe, that in the present state of parties, as that principle has operated, it has developed itself in the best possible manner. It entirely does away with that oppressive burden which is thrown upon the working classes. It is right and just that we should adopt it; and therefore I am in favor of the Report of the Committee being sustained, as far as it goes. I admit that it does not go far enough for me; but I shall sustain the Report of the Committee.

On motion by Mr. CRESSY, of Hamilton, the Committee rose, and, the President having resumed the chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported progress, and asked leave to sit again.

Leave was granted.

*Reports from a Committee.*

Mr. HALLETT, for Wilbraham, presented the following Reports from the Committee on the Bill of Rights, which were referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a minority of the Committee on so much of the Constitution as is contained in the Preamble and Bill of Rights, report that the second Article of the Bill of Rights ought to be so altered as to change the words "for his religious profession or sentiments," to the words "for his profession or sentiments concerning religion."

So that it will read, if so amended: "And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion."

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
HENRY WILLIAMS.
GEO. S. HILLARD.

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

To strike out from the 28th Article of the Bill of Rights the words "but by the authority of the legislature."

So it will read, if amended: "No person can, in any case, be subjected to *law-martial*, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service."

B. F. HALLETT.
L. MARCY.
H. WILLIAMS.

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

That there should be added to the 15th Article of the Bill of Rights the following clause:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case.

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
L. MARCY.
CHARLES ALLEN.
H. WILLIAMS.

On motion by Mr. HALE, of Bridgewater, the Convention adjourned, until three o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock.

*Specie Payments.*

Mr. FROTHINGHAM, of Charlestown, from the Committee on the subject of Banking, submit-

ted the following Report, which was referred to the Committee of the Whole, and ordered to be printed.

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The Committee on the subject of Banking, to whom was referred an order, to consider the expediency of providing that the legislature shall have no power to authorize, or pass any law sanctioning the suspension of specie payments by any corporations issuing bank notes, have considered the same, and report, that it is inexpedient to take any action on this subject.

RICHARD FROTHINGHAM, JR., *Chairman.*

*Final Adjournment.*

Mr. EARLE, of Worcester, from the Committee on the subject of the Final Adjournment of the Convention, reported, that in the opinion of the Committee, the Convention may finish up its business, and adjourn on Saturday, the twenty-third instant.

The Report was laid upon the table.

*The Pay Roll.*

Mr. WILSON, of Natick, submitted the following order, which lies over for consideration to-morrow:—

*Ordered*, That the Committee on the Pay Roll be instructed to make up the same, including the day of adjournment, and that no member receive pay except for the days of actual attendance.

*Limitation of Debate.*

Mr. ADAMS, of Lowell. I move now, Mr. President, that debate in Committee of the Whole, upon the subject of Elections by Plurality, cease in one hour after the Committee shall again resume the consideration of the same.

Mr. BRADBURY, of Newton. It will be remembered, by the Convention, that this subject has been under consideration heretofore, in the Committee of the Whole, and that we found ourselves, at the close of that discussion, with some eight or nine entirely new and distinct questions to settle, after the hour had arrived at which debate had been ordered to be closed, by an imperative vote of the Convention. There is little time now allowed, very little, and there are a number of questions before the Committee of the Whole, and they may be varied, by new motions constantly offered; and I submit, whether it is proper or fair, to the members of the Convention, to put it in the power of a member of the Committee of the Whole, to bring a member to a vote upon a question instanter, without any opportunity for discussion?

The proceedings in this Convention, in this respect, have been very unlike the usual deliberative proceedings in this capitol, and I have heard members of different views unite in condemning them. Under a procedure similar to that now recommended by the gentleman from Lowell, (Mr. Adams,) the basis of the House, which had been for many days under discussion, and had been deliberately modified, was at once, without debate, essentially transformed, on a motion which, for want of time, could be neither discussed nor examined.

And I am fully of opinion that, exclusive of those who had had the privilege of previous examination, there was not one man in ten that knew the effect of the proposition to which I refer, of the gentleman from Lowell, (Mr. Abbott,) which constitutes the vital part of the adopted basis of the House of Representatives.

I will say no more, because I have spoken three or four times upon this subject, but I have been brought to vote upon propositions entirely new to me, and upon which, not one word of explanation was allowed, *pro* or *con*. On the previous occasion, after having consumed a great deal of time in the discussion of the general question of plurality, we were brought to vote *instanter* upon eight or nine distinct issues; and now I submit, whether it is right to place ourselves in a position where we cannot fairly and fully understand the questions which may be presented? I submit, as the Convention has full control over the Committee of the Whole, whether it would not be better for the Convention to instruct the Committee of the Whole to report at a certain time, so that the right to submit new propositions, and the right to debate, may be coextensive?

Mr. WOOD, of Fitchburg. This Convention has already been in session a month longer than it was expected to be, and this subject now under discussion, has heretofore had one full discussion, and at the time it was recommitted, it was said, as an objection to its recommitment, that we should have to go over the whole matter, *de novo*, its origin, its history, and all, at as great length as at first. But we were assured by many members of the Convention that it should not be so, for as most of us understood all the bearings and all the suggestions in relation to the matter, though we should not precisely approve of the Report of the Committee, we could proceed to vote without much discussion; indeed, without there being any necessity for much discussion. I was surprised, under these circumstances, to see, this forenoon,

with what ardor certain gentlemen made an attack upon the Report of the Committee, and to see them proceed to argue it as a new question before us. If this course is to be pursued, I seriously ask, when are we to get through? The question has been asked by our constituents many times, and as often we have been compelled to say we do not know, and cannot tell; that many of our debates are spun out to an unreasonable length, and that things which were fairly understood by all of us, have been talked about over and over again, until we were disgusted by them. Now, the question is, whether we shall go on talking over these matters, or whether we will come to a decision upon them, and thus be able to meet our constituents with honest faces?

It seems to me that it is about time, that now, the latter part of July, we should seriously think about adjournment, and that we should expedite business by working seriously, and talking less. Here is a fit subject for us to begin upon; and will we keep talking about the matter? The gentleman from Newton, (Mr. Bradbury,) thinks that we are unable to understand the matter, as though we were fools. It is not so. I am somewhat surprised to see how well the members of this Convention understand subjects brought before them—most of them much better than I do. Without saying anything more—because I wish to exemplify my theory by practice—I hope the motion will prevail.

Mr. BRADBURY, of Newton. I move to amend the motion of the gentleman from Lowell, (Mr. Adams,) by striking out the word "one," and inserting in lieu thereof, the word "three," so as to provide that the question shall be taken in three hours after the Committee of the Whole shall resume the consideration of the subject.

The question was taken on the latter amendment, and it was not agreed to.

Mr. BRADBURY. I now move to strike out "one," and substitute "two."

The question was taken on the latter motion, and the amendment was not agreed to.

The question recurring on the original motion of Mr. Adams—

Mr. BUTLER, of Lowell, moved to strike out the word "one," and substitute "three-quarters of an hour."

Mr. ADAMS accepted the amendment.

The question was then taken, on the motion offered by Mr. Adams, as modified, and it was decided in the affirmative—ayes, 107; noes, 73.

So the motion was agreed to.

*Elections by Plurality.*

Mr. UNDERWOOD, of Milford. I move that the Convention resolve itself into Committee of the Whole, upon the unfinished business of the morning, to wit: the subject of Elections by Plurality.

The motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Hillard, of Boston, in the chair.

The CHAIRMAN stated the question to be first, upon the amendment submitted by the gentleman from Plymouth, (Mr. Davis,) and then upon the motion of the gentleman from Boston, (Mr. Schouler,) heretofore inserted.

Mr. LADD, of Cambridge. I confess that I do not fully understand the object sought to be accomplished by the third resolve, to which the amendment of the gentleman from Plymouth, (Mr. Davis,) applies, nor have the Committee which reported them, thrown much light upon the subject. I find that it is reported here, that, upon the first trial for the election of representatives, the majority principle shall obtain. But if no one shall obtain a majority, then that the candidate having the highest number of votes upon a second, or any subsequent ballot, shall be declared elected. I can very well understand what the majority rule itself is, and the force of the arguments which are brought to sustain it and show why it should be applied. I can very well understand what the plurality system is, and can appreciate the force of the arguments which are advanced in support of that rule. But when it is proposed, that a majority of all the votes cast, shall be required upon the first balloting, to elect a member of the legislature, and a plurality only of votes cast upon a second, or any subsequent ballot, it seems to me that, in the first place, an unnecessary amount of machinery is introduced, to accomplish precisely the same purpose. If there is an election upon the first balloting, the majority rule prevails. If there is a plurality only of votes, why precisely the same thing is accomplished as is proposed to be accomplished by a plurality upon the second balloting. It appears to me that, as the first trial is ordinarily held, and will be held, when a choice of officers for the Commonwealth is to be made, that there will, in ninety-nine cases out of one hundred, be a much fuller expression of public opinion, than there will be upon the second trial; and I should like to be informed of the object to be accomplished by this resolve, that there shall be an election by a plurality vote upon a second trial. I can see no purpose to be accomplished. I suppose, in point of fact, that in the large towns of the Commonwealth, if there should be no choice

upon the first balloting, there would be none at all, except by an adjournment to the next day, or to some subsequent day. Undoubtedly in the small towns, where it is customary to ballot more than once upon the same day, a result might be obtained. But I do not see how anything is to be accomplished, by any reasoning which has been presented to this Convention, and it can only give force to other considerations which are not worthy of being presented as arguments before this Convention. I can see how it gives an opportunity of success to the minority of the electors on the second trial, and, by an arrangement, or some other mode, to defeat the will of the majority; but for all practical purposes, it seems to me, that the second provision is useless, and I think we ought to adhere to the majority principle in the election of representatives, or to the plurality system; and, at the proper period, I shall offer the following amendment:—

*Resolved*, That in all elections of representatives to the general court, the person having the highest number of votes shall be elected.

Mr. MOREY, of Boston. The question now under consideration, is one of the most important that has been brought before the Convention. It is one in which the people feel a deep interest, probably a deeper interest than in any other that has been discussed here. This matter came before the Committee of the Whole some weeks ago, and was then discussed at much length, but it was found that there was nearly an equal division of sentiment upon the subject, and it was deemed of so much importance, that it was referred to a new Special Committee. That Committee had the matter under consideration some four or five weeks before they made their Report. During this whole interval, the policy of adopting the plurality principle must have been discussed in private circles, and I am sure many members have bestowed upon it much attention. It certainly has been expected that when this Report should be called up, there would be a full discussion upon it, and that we should obtain the views of many gentlemen, enlarged and matured by conversations, not only with their associates here, but with other persons, in various parts of the Commonwealth. But when this Report came in order, and members rose to express their opinions, they found themselves embarrassed, and liable to be cut off in the midst of their speeches, by a miserable half-hour rule, and now they are put under the restriction of an order just adopted, declaring that all discussion upon this great subject shall cease in the Committee of the Whole, in three-quarters of an hour. It may be said that the question will come up again in the Convention; but when it does, a similar summary process may be adopted, and an end be put to all discussion. I do not complain of this on my own account. I have no desire to express my views in relation to the plurality principle, for I happen to belong to that class of old fogies who have preferred that a majority should be required in our elections. I have at all times, *heretofore*, been opposed to the plurality rule. Under present circumstances, however, I feel constrained to vote in favor of framing an amendment, establishing this rule, and of sending it out to the people for their consideration and action; and my reasons are mainly founded on the history of this Convention, to which I will now call the attention of the Committee. In the legislature of 1851, the senator from Franklin, (Mr. Griswold,) now the delegate for Erving, brought forward a proposition to alter the Constitution in relation to the system of representation in the House. He introduced two or three resolves, drawn up in proper form, for the purpose of accomplishing this object. These resolves passed the Senate, but failed to obtain the requisite number of votes in the House. Afterwards, an attempt was made to *district* the cities and large towns, and a bill, designed to effect that object, was carried through the Senate and was sent to the House, where it was referred to the Judiciary Committee, of which the gentleman who is at the present time attorney-general of the United States, was chairman. It was understood that he was of opinion that the legislature had no constitutional power to enact such a law, and the bill was not, I believe, ever reported to the House, but died in the hands of the Committee.

The next movement of the indefatigable and persevering senator from Franklin, was to offer an order for calling a convention to revise the Constitution, and a bill was, in due time, reported by a committee of which he was chairman, providing that the question whether such a Convention should be held, should be submitted to the people.

The committee, however, made no formal written report, and of course did not set forth their reasons for this measure; but as the movement grew out of a failure to alter the Constitution, touching the basis of representation in the House, it was understood that the great object of the Convention was to effect an important change of that basis. It went before the people with this aspect, and the result was, that the measure failed by about five thousand majority against it, many of the small towns even voting against it. At the next session of the legislature, the project

was revived. The senator from Franklin, determined, if possible, to accomplish his favorite scheme, again brought forward a proposition for calling a Convention. On his motion, a large committee of both branches was appointed, of which he was placed at the head.

The sagacious chairman was satisfied, from the result of the former trial, that in order to insure success the next time, a formal and direct appeal must be made to the people, by presenting to them some more powerful reasons for calling a Convention than such as related to the system of representation in the House. It fortunately so happened for the chairman, that a strong feeling had grown up throughout the Commonwealth, in favor of the plurality principle in our elections. Several congressional districts had, for a long time, been unrepresented. In the fourth district fourteen trials had taken place without securing an election. A majority of the Senate had rarely been elected for a long period, and sometimes not even a quorum. There had been no election of governor and lieutenant-governor for a series of years. From these causes, a strong and general desire had arisen for the establishment of the plurality rule. The subject had been much discussed everywhere—in newspapers, at conventions, and other public meetings.

Under these circumstances, the Franklin senator resolved to avail himself of this manifest popular feeling, and drew up an elaborate report, setting forth the reasons for holding a Convention, amongst which the necessity and expediency of adopting the plurality rule, were strongly and pointedly set forth. That report, after stating that the proposed new system would save expense, and prevent much party animosity, which is now engendered by repeated trials, proceeded to say: "That the practical operation of our Constitution for the last ten years, has been, in very many instances, to place in the most important offices in the State, men who have received, not a majority, but only a plurality of the popular vote. Indeed, this result seems to be fast becoming the general rule, and not the exception. And, in some instances, these offices have been filled by men who have received not even a plurality of the popular vote."

The report goes on to state what officers should especially be elected by a plurality, as follows: "The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil."

Thus the report specifies what officers the plurality principle should be applied to; and what are they? Why, the very ones who it is now proposed must have a majority to secure their election; that is the proposition now before us, is just the reverse of what was recommended by the legislative committee.

Mr. GRISWOLD, for Erving. Will the gentleman yield to me for a moment.

Mr. MOREY. For a moment.

Mr. GRISWOLD. As this subject has been so often alluded to, in justice to the other members of the committee who signed that report, I desire to make a single remark, for I think they have been somewhat misapprehended in relation to this subject. For myself, I care little about the matter, for I believe my sentiments upon the subject of plurality are well enough understood; *I* should prefer that these officers should be elected by plurality, if I could get it, but it is evident that is not the feeling of the Convention. But, Sir, if this seventh section of the report is quoted, it should be done in connection with the sixth. I will read the beginning of that article.

Mr. MOREY. I can hardly afford to lose my time for the gentleman to read from his report.

Mr. GRISWOLD. Just a line or two.

Mr. MOREY. I will read the whole two sections, if the gentleman desires it. Here they are:

"6. In the sixth place, we recommend the adoption of the plurality system, in more of our elections. To what extent the Constitution should be revised on this subject, and how far the system shall be carried, will of course remain for the Convention to settle. Nor do we now express any opinion as to which would be the most expedient, if the system is to be adopted, to apply it to the *first*, or only to the *second*, or some *subsequent* election. But the time and money which is now expended, and the party animosity which is engendered, by the numerous and unsuccessful attempts to elect the various state, county, and town or city officers, have become grounds of repeated and loud complaints in all portions of the Commonwealth. This part of the Constitution should undergo a thorough revision; it should be done not rashly, but with great care and deliberation. We are aware that the majority principle has long been considered the conservative element of our Constitution; and many sound and well-balanced minds may take alarm at a proposition of this kind; but we think that a moment's reflection will satisfy the most fastidious, that their fears are groundless. The practical operation of our Constitution, for the last ten years, has been in very many instances, to place in the most important offices in the State, men who have received, not a majority, but only a plurality, of the popular vote. Indeed, this result seems to be fast becoming the general rule, and not the exception. And in some instances,

these offices have been filled by men who have received not even a plurality of the popular vote.

"No one has a right to complain of these results, so long as the Constitution remains as it is; and we only allude to them, for the purpose of showing that the Constitution itself, in its practical operation, has partially destroyed a principle, which by many has long been considered essential to the stability and perpetuity of our government. This subject was thoroughly discussed, in all its bearings, in the popular branch of the legislature, during the sessions of 1849, and 1850, and although the most disastrous results were then predicted, should the plurality principle to any extent become a law, yet we believe that the act of last session, providing for the election of members of congress by plurality on the second trial, is not only a just, and safe, but very popular law.

"7. The present cumbersome, formal mode of organizing the government, we submit, should be abolished. Eight or ten days are now usually occupied in this organization, which is nothing less than an annual waste of six or eight thousand dollars of the people's money. The election of secretary of the Commonwealth, treasurer and receiver-general, auditor of accounts, and executive councillors, by the people, with an application of the plurality principle to these officers, as well as to the governor, lieutenant-governor, and state senators, would do much to remedy this evil. These changes, with a few other slight modifications of the Constitution in the same direction, especially the establishment of a board of men to count the votes, declare the result, and notify the persons elected, would enable the legislature to organize the government, and be ready to proceed with the business of the session, in two, or at the longest, in three days. This change alone, would, in the course of ten years, nearly or quite defray the whole expense of the Convention."

Now, Sir, if the gentleman had desired to use language more strong and specific, he could not have done it. That document was regarded as an able and elaborate report, as it is. It was praised and quoted from in all the newspapers, except the Whig newspapers, and I believe in some of them. It certainly was extolled, not only in all the Democratic newspapers, but in most of the Free Soil journals. Several thousand extra copies were ordered to be printed by the Senate, and I think an extra number was ordered in the House. It was regarded by the friends and advocates of the Convention as the great campaign document, and it was so advertised in the newspapers. It was reprinted, and a multitude of copies sent broadcast over the Commonwealth. I heard of it in every direction. It was thrown into every house, put into every man's hands, and was read everywhere.

And what was more, some of the gentlemen who signed the document, being the most popular orators of their parties, went forth and took the stump in favor of the Convention. By looking into the *Commonwealth*, and other newspapers of that date, you will find appointments for these gentlemen to speak, in different portions of the State, for almost every day in the week, for many weeks prior to the time of voting upon this subject. Well, Sir, when they thus went forth, they surely supported the calling of a Convention, and, I presume they used the same arguments as were employed in the report which they signed.

Being anxious to learn how things were going on, I made inquiries of some gentlemen, belonging to the party with which I was associated, who had been out and addressed the people with reference to the approaching election, and occasionally with regard to the Convention. When I asked what the prospect was, as to the Convention, the reply was, that the plurality doctrine was carrying all before it; that many of the Whigs were coming out in favor of it, and that the other parties were to a man, advocates for it.

In consequence of this state of things, the Whig speakers pretty much gave up the idea of interposing any obstacle in the way of calling of the Convention. They seemed inclined to let the thing take its course. This was acquiesced in, inasmuch as many of those speakers were in favor of the plurality doctrine, and that doctrine was put forth with so much prominence and effect by its particular advocates.

Under these circumstances, it was not for me, old fogy or not, to stand out against this feeling, which was prevailing amongst the people, especially when it appeared that so many of the party with which I was acting, were disposed to support this principle. My colleague, (Mr. Schouler,) was, and had for a long time, been earnestly in favor of the plurality. All the speeches that were made during the campaign by advocates of the Convention, contained more or less arguments in favor of the plurality principle; and I undertake to say that it was the expectation of securing this reform, more than anything else, that carried the proposition for a Convention with the people. I am very confident that if the people had not supposed they were sure of having the plurality system adopted, there would have been a decided majority against a Convention. If the reformers in this body, who took the field last autumn, and addressed the people on this subject, had have then made the same speeches which we have heard from them here, against the plurality rule, the whole project of a Convention would have been defeated by an overwhelming vote. You had tried it once before with reference to the basis of representation in the House, and the scheme signally failed.

Yet, these very gentlemen, who put forth the

reasons I have stated, for calling a Convention, and who induced the people to act upon them, now virtually say to the people: "We have got the Convention out of you, but as to this plurality system, you shall not have it. We not only will not give it to you, but we will not so much as frame an article of amendment, submitting the question to you. We will not allow you to pass upon the subject."

Now, Sir, notwithstanding the fact that I have heretofore been opposed to the introduction of this principle, yet I, for one, have too much regard, too much respect for the people, to take the course which is pursued by members of this Convention in relation to this matter. I think these gentlemen indicate the most utter contempt for the people by withholding this proposition from them. I therefore say, that I am in favor of framing an article of amendment, establishing the principle, such as is contained in the proposition of my colleague, (Mr. Schouler,) making those officers eligible by a plurality, who are specified in the report and programme of the Convention, drawn up by the gentleman for Erving, (Mr. Griswold).

I would send out such a proposition, and let the people decided upon it for themselves. Not to do as much as this, is, as I said before, treating the people with perfect contempt. It will be not much better than obtaining goods by false pretences. It will be perpetrating a fraud upon the people. They were called upon particularly to vote for a Convention, in order that the plurality principle might be fully established in our elections, and now, when they have called the Convention, they are to be denied the privilege of voting upon this measure, to secure which, this Convention was advocated and called. Sir, I repeat it. I shall vote in favor of submitting this question to the people. I regard the members of the Convention as more pointedly, specifically, and emphatically instructed upon this subject than upon any other; and I think that by incorporating with the amendments, to be submitted to the people, an article containing this provision, we shall more directly and certainly carry out their wishes, than by any other proposition we can adopt.

The low murmur of dissatisfaction with this fraudulent suppression of the very amendment which the people have expected, and most of all desired, has already reached us from the hills and valleys of Massachusetts. Ere long, we shall see the leaders of the majority in this Convention begin to quake and tremble; and I venture to predict, that before the close of the session, some one of these Constitution-menders will be directed to bring forward propositions to amend and qualify certain important resolutions which have been adopted, and to insert a shred here and a patch there, in order to relieve, if possible, the most obvious defects of their work, and to avert, or moderate, in some degree, the censure of their constituents. I warn gentlemen not to flatter themselves with the hope of escaping the indignation of the people by any miserable apology, or even half-way substitute, for the adoption of a plain, distinct, and extensive plurality system. I say, let this principle be introduced in the election not only of senators, executive councillors, county and district officers, but of governor, lieutenant-governor, secretary of state, treasurer, auditor and attorney-general, and on the second trial, if not on the first, of representatives to the general court. Let this whole subject be submitted at once, directly to the people, and to the people alone. Nothing else can, will, or ought to satisfy them.

Mr. GOOCH, of Melrose. Mr. Chairman: I never knew exactly what an old fogy was, until I came into the Convention this afternoon. But if we may take the definition of the gentleman from Boston, (Mr. Morey,) he is a man who thinks one way, and votes another. The gentleman says he believes in the majority principle, and yet, intends to vote to submit to the people a proposition in favor of the plurality principle; and he claims to be an old fogy.

Now, Sir, the gentleman has very different ideas of our duty as members of this Convention, from those which I entertain, if he thinks that by such a course of conduct we shall discharge that duty. I believe we were sent here to recommend to the people such alterations in the Constitution as we believe should be made, and no others. I believe the people have a right to expect that every man here will act conscientiously; that when he votes he will vote his honest sentiments, without regard to what other people think, and without regard to what other people may do. It seems to me that every man who fails to vote and act in this manner, fails to discharge his duty.

Now, Sir, in relation to the resolves before us, I am sorry, as well as surprised, to see them reported in the form in which they appear before us, coming, as they do, from the Select Committee upon this subject. When this subject was before us, upon a former occasion, I recollect a certain distinction was made, or proposed to be made, with regard to the election of certain officers by a majority, and certain others by plurality. If I recollect rightly, the proposition was introduced by the gentleman from Worcester. It was, in substance, that the law-making power

should be elected by a majority, and that the other ministerial officers should be elected by a plurality. I thought then, that there was good reason for the distinction, and I think so still. I, for one, am perfectly willing to live in a Commonwealth, and to abide by the laws which are enacted by a majority of the people of the Commonwealth, and I am willing to yield my private judgment to no other authority. And should I be called upon to yield my private judgment, to yield my property, my liberty, or my life, under the authority of the laws of this Commonwealth, I desire that the laws which make this requisition upon me should be the laws of the majority of the people of the Commonwealth, and not the laws of a minority. That is my doctrine, and I had always supposed that to be the doctrine of the people of Massachusetts.

I care not what documents certain gentlemen have sent out to the people, to influence them in calling this Convention. Those documents are worth just as much as the opinions and sentiments of those gentlemen expressed in any other way, and no more. They have their weight as the opinions of those individuals, and no other. But I do not care how many men may have recommended, or sent out this document recommending the establishment of the plurality principle; it has no weight with me, except so far as the opinions of those men who signed this document are concerned, and so far as the reasons it contains are entitled to weight; nothing farther. I have been a little surprised, that such arguments and such influence, as have been used by the gentleman from Boston, should have been brought in here, and pressed upon gentlemen as if they were binding upon them. Sir, I know nothing about any such document as the gentleman has referred to, and I care nothing about it. I care not which party put forth this document; it can have no influence upon my vote. And I believe it will have no influence upon the vote of any honest man in this Convention.

I said I was surprised to see these resolutions reported in the shape in which they now come before us, because I did believe the Committee would recognize the distinction made by the gentleman from Worcester, viz.: that the law-making power of the Commonwealth should be chosen by a majority, and that the mere ministerial officers should be chosen by plurality. I supposed the Committee might be willing to sacrifice this much of the true principle, for the sake of convenience and accommodation—for the sake of saving time, expense, and trouble. But I did not believe they would go farther than that. But what have we before us, in these resolves?

In the first place, the governor is to be elected by a majority of the people, provided he obtains a majority upon the first trial, and if not, he is not to be elected by the people at all; but he is to be elected by the agents of the people. He is to be elected by those whom the people have delegated, or whom they may delegate, for that purpose, in case of a non-election by a majority of the people. Well, Sir, I suppose the reasons for that provision are these: I suppose they intended to provide, in the first place, that the governor should be elected by a majority of the people, but that, in case no one received a majority of the votes of the people, the majority principle should still be maintained, and that he should be elected by the House of Representatives and by the Senate, who were also elected by a majority of the people; and this provision of the first resolution I should like, if the other resolutions provide for the election of the House and Senate by a majority. Well, Sir, what do those resolutions do? What do they provide? They provide that the governor shall not be elected by the people at all, unless he is elected by a majority at their first trial. And then they provide that your House of Representatives shall be elected by a plurality, or that a portion of its members may be elected by a plurality, and your Senate by a plurality, and that your governor shall be elected by your Senate and House of Representatives. You thus strike out the majority principle from your law-making power, from beginning to end. Now, Sir, although I have always been opposed to the plurality principle as applied to the law-making power; yet, rather than vote for these resolutions as they stand, I will vote for the plurality principle, carried out to its full extent.

We provide, if we adopt these resolutions, that every department of the government may be chosen by plurality, without a single feature of the majority principle entering into the system, from beginning to end, and yet refuse to say that a plurality of the people shall elect. As I said in the outset, I care not for the majority principle, except so far as the law-making power of the Commonwealth is concerned. I would like to see the offices mentioned in the first resolution stricken out altogether, except the offices of governor and lieutenant-governor, and a provision made, that, in all elections of senators and members of the House of Representatives, a majority of votes shall be necessary, in all cases, to constitute an election. Then, if we fail to elect our governor by the people, we have a House of Representatives and Senate elected by a majority of the people, and they elect a governor. Then, what do we establish? If we cannot elect our

governor directly by our votes, we provide that those persons whom we have elected by a majority of the votes of the people to represent us in the legislature, shall elect our governor for us. If there is an election by a majority of the people, the matter is settled; but if there is no election by a majority of the people, then the people have said that they could not agree upon the election of a governor. And in such a case, what do we do? As we cannot meet again, and decide this question for ourselves, we pass it over to our agents, elected by a majority of the people, and let them settle this matter for us. And, if our agents cannot secure for us our first choice, they can take our second choice. That is the advantage we gain from this system. But, certain gentlemen assert, that by the adoption of such a system, certain towns must go unrepresented. Why must they go unrepresented? Simply, because they do not desire to be represented; because they had rather not be represented at all, than be misrepresented. I grant you, that non-representation is an evil; but it is not so great an evil as misrepresentation. I say, if my town cannot have a man to represent it, who can represent a majority of its citizens, then no man has any right to represent it. If my town wishes to be represented in the legislature, then the wishes of a majority of its citizens should be represented, and not the wishes of a minority. The evil of non-representation is one which the town can cure, and will cure, just as soon as it is for its interest to do so. The very moment it is for the interest of the town to have a representation upon the floor of the House of Representatives, then it will have such representation. There is nothing in the way. They have nothing to do but select and vote for a man, and send him here. If, in some instances, certain towns do not send a representative, it is because the condition and sentiments of the people of these towns are such, that they cannot find men who will truly and properly represent them here. The House of Representatives, by the plan proposed, is to be larger hereafter than it has been in times past, but we have never known the time when there has not been on the floor of the House a sufficiently large number of representatives to transact the business of the Commonwealth. I think an instance can scarcely be found, when any town has suffered one iota from the evil of non-representation. I hope that the resolution, as it now stands, will not be adopted by the Committee. Gentlemen ask me how we will fill vacancies in the Senate. I would provide for a second election, in the case of the non-election of senators; and I would see to it, that a man should be sent who would truly represent the majority of the district, or else send no man at all.

Mr. BUTLER, of Lowell. In the few minutes given me I will endeavor to say a word upon a given subject, not proposing to enter upon an argument of this question, for the time for argument has passed. I wish to say a word about that immortal "document" upon this subject of plurality, which has now been read five times. It was a very good argument, and it did its office well, which was, to beat the old fogies, as their chief admits; but I do not see why it could not have been suffered to rest in peace. The gentleman from Boston, (Mr. Schouler,) read it; then the gentleman from Brookline (Mr. Aspinwall) threw it at the head of the gentleman from Worcester, (Mr. Davis,) then, the gentleman from Worcester not being here, I read another portion of it; then the gentleman from Boston, (Mr. Schouler,) read it again, and when another gentleman from Boston, (Mr. Morey,) so happily edified the Committee by quoting from the same able document, I was inclined to say, *et tu Brute*. I should like to ask the gentleman from Boston, (Mr. Morey,) if he could make up his mind to elect a Whig representative "who is worth his weight in gold" to the gentleman, by plurality, without trying to get a majority? Would he wish to elect even "a Hunker Democrat seventy-five years old?" Would he not, after all, rather have a majority? I was very much surprised to find that the gentleman from Melrose was going against the Report because there was nothing of the majority principle in it. I am surprised that my younger friend from Melrose, (Mr. Gooch,) should say that rather than have this, he would have the plurality all through. There is some of the majority principle in this Report. This proposition, as I said upon a former occasion, is a compromise, or an agreement to go upon one side as far as we could towards a plurality system, and at the same time to save the majority rule as far as we could upon the other. We endeavored to bring this matter to a close, and labored as earnestly as we could to present a system which should have little complexity, and which should meet the opinions of all. Whatever we may do, I do not see how we are to be accused of endeavoring to get the votes of the people by false pretences, because that document said originally that this plurality question was to be settled in such a way as the Convention thought best. That is what we are doing to-day. I say to gentlemen who make such strong objection to the adoption of this system, if they will have the kindness to take my place and go into the committee-room along with the other gentlemen

who compose the Committee that presented this plan, and make a better system, one that will better bring together all these various views, I shall be most happy to vote for their report; but until they can do that, I must stand by the Report which I have presented. I have no particular pride of opinion about it. The only wish I have is, that the matter may be settled, and that, too, without delay.

The hour at which it was ordered that debate should cease, in Committee of the Whole, on the subject of elections by plurality, having arrived, the Committee proceeded to vote upon the pending question, being the motion of the gentleman from Plymouth, (Mr. Davis,) to amend the third resolve, relative to the election of representatives, so as to provide that they shall, in all cases, be elected by a majority instead of on second trial by plurality. A count being demanded, there were —ayes, 70; noes, 164.

So the amendment was rejected.

The question recurred on the amendment of the gentleman from Cambridge, to strike out all after the word "Resolved," and insert the following:—

That in all elections of representatives to the general court, the person having the highest number of votes shall be elected.

The question was taken, and it was, upon a division—ayes, 82; noes, 163—decided in the negative.

So the amendment was rejected.

The question recurred on the motion of the gentleman from Boston, (Mr. Schouler,) to strike out all after the word "Resolved," and insert the following:—

That it is expedient to provide in the Constitution that in all elections for governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, the person having the highest number of votes shall be deemed and taken to be elected.

Mr. HUBBARD, of Boston, proposed to amend the pending amendment by inserting after the words "lieutenant-governor" the word "councillors."

Mr. SCHOULER accepted the amendment, as a modification of his own.

Mr. GRAY. I will take the liberty of suggesting to my colleague, that councillors are provided for in the next resolve.

Mr. HUBBARD. My object was to have two chances to secure this provision.

The question was taken upon the amendment of the gentleman from Boston, (Mr. Schouler,) as modified, and, upon a division—ayes, 85; noes, 156—it was decided in the negative.

So the amendment was rejected.

Mr. HATHAWAY moved to strike out all after the words "general court," and to insert the following: "All county, district, city, and town officers, shall be elected as shall by law be provided." That, Mr. Hathaway remarked, will leave the matter, so far as the election of these officers is concerned, precisely as it now stands under the present Constitution.

The amendment did not prevail.

Mr. CHURCHILL, of Milton, proposed to amend the last resolve by striking out the word "legislature," and inserting the words "governor, by and with the advice and consent of the council."

The amendment did not prevail.

Mr. GARDNER, of Seekonk, moved a reconsideration of the vote by which the Committee rejected the amendment offered by the gentleman from Plymouth.

Mr. DENTON, of Chelsea. I confess, Sir, that I did not quite understand the amendment of the gentleman from Plymouth. The gentleman from Plymouth, in his explanation, did not satisfy me that it would include——

The CHAIRMAN. The Chair must remind the gentleman that debate is not in order.

The motion to reconsider was rejected.

Mr. ADAMS, of Lowell, moved that the Committee rise, and report the resolves to the Convention, with the amendments proposed by the Committee, with a recommendation that they be adopted.

The motion was agreed to, and the Committee accordingly rose, and the President having resumed the chair of

THE CONVENTION,

The chairman of the Committee of the Whole reported the resolves and amendments, with a recommendation that they do pass.

The question being on concurring in the amendments proposed by the Committee of the Whole.

Mr. WALKER, of North Brookfield. It is a very unpleasant task to undertake to oppose what has been settled in Committee of the Whole. We have voted to report these resolves to the Convention, but I cannot allow the question to be taken without saying that I hope—that is, that I desire—that the Report of the Committee will not be accepted. The third resolve provides that the representatives——

The PRESIDENT. With the leave of the gentleman, the Chair would suggest that the first question is on concurring in the amendments

reported by the Committee, which are merely verbal.

The amendments reported by the Committee of the Whole, were concurred in.

Mr. SCHOULER moved the adoption of the amendment which he had proposed in Committee of the Whole.

Mr. SCHOULER, of Boston. I intend to take up but very little time in the discussion of this question, although it is one upon which I have bestowed a great deal of thought, and one in which I feel a great deal of interest. It appears to me, notwithstanding the remarks of the gentleman from Fitchburgh, (Mr. Wood,) that this matter has not been discussed at that length which its merits deserve. We did have, in the early part of the session, a proposition about plurality in elections. The gentleman from Fall River, (Mr. Hooper,) the chairman of the Committee upon that subject, made a Report, which was, as I understand, the unanimous Report of the Committee, in favor of adopting the plurality system in our elections. That question was discussed in Committee of the Whole, but the vote was so close that one moment we would carry it one way, by one or two votes, and the next moment a reconsideration would be moved, and then it would go the other way. When the whole matter was reported to the Convention, before we could get to a vote upon it here, and before we could call the yeas and nays, to see what was the true state of feeling of the members of the Convention in regard to the subject, it was taken from our hands and sent to one of the committee-rooms. We have got another proposition, reported by the gentleman from Lowell, (Mr. Butler,) and what is it? It gives up the whole principle contended for by gentlemen who oppose the plurality system. I do not like to go into matters outside of the particular subject now before us; but no one can look at that resolution, and who knows the history of this Commonwealth, and fail to see, that there is something behind all this thing, which is not explained in the Report. What is the proposition? It was stated by the gentleman from Melrose, (Mr. Gooch,) that we should elect our Senate and House of Representatives by a plurality, but should not elect any of the general officers by that rule, and that they must be elected by a majority. What is the effect of it? It is to throw the election of all these officers into the legislature, where there would be finesse and caucusing employed, and there would be this man to be weighed against the other, this office against the other, and then comes the matter into the legislature, and they are to vote upon it. How are these officers to be elected? By men who are chosen by a plurality vote. You will not allow the people to decide it in the first place; you get the election into the State House, where the legislature are to decide it for them. I think there is no sense in this. The gentleman from Lowell, (Mr. Butler,) speaks about this proposition being a compromise; but it is the most singular compromise that I ever heard of in my life. It does not compromise anything but principle, and it does compromise the principle of the majority, and gives no satisfaction whatever to those who are in favor of the plurality system. I should like to have an explanation of this compromise—where it begins, and where it ends. It leaves all the difficulty with which we have so often found fault, precisely where we found it, and it leaves us in this predicament: that we cannot organize the legislature for seven, eight, or ten days, after coming together, at an expense of seven or eight thousand dollars every year. I ask the members of this Convention, whether seven or eight thousand dollars a year are not worth saving? and we can save it by saying that the people shall decide, instead of leaving it to a plurality legislature to decide. I think this matter deserves some consideration.

If we are to elect at all by plurality, I go for electing everything by plurality. We may elect by a majority, if we have a mind so to do, but what advantage are we to gain by it? Where are we to make any reform here, by which we are to save one single cent of the people's money? History shows in the progress of commonwealths and nations, that corruption does creep in, and it seems to me, that this is a plan for the corruption of offices, or rather for the corruption of those who hold office. This is an entering wedge which will bring about such a state of things. We may just as well have no election by the people, and give the legislature the right of electing in the first instance, instead of going through this mere sham, and having a vote taken which amounts to nothing. As long as this majority principle for the general officers is kept up, just so long there will be no election by the people. In the state of parties of this Commonwealth, as they now exist, there will be no election by the people so long as the majority principle is retained in the Constitution; but when you take that out of the Constitution, then, in my judgment, there will be elections by the majority of the people. It does seem to me—I do not make the charge, but I cannot dismiss it from my mind—that this proposition is presented for the very purpose of getting the election of these officers into the legislature, where the offices might be sold and

doled out, and where men could make bargains in regard to them. I say that the people demand no such thing, but quite a different thing. It may be denied, but it appears upon the face of the proposition. If I stood upon the other side of the House, where I could address the eastern gallery, which seems to vote down all these propositions, I might, perhaps, be able to effect more than I now shall do. I recollect a few years ago, in this House, that there was a gentleman from one of the western towns, who, although he had the right in his case, always had the majority against him. He stood right here, and when they took the vote, he carried the fifth and sixth divisions unanimously, while the other side of the House went against him. He thought he would change his position, so he went to the other side of the House, spoke there once, and then spoke in the centre of the House, so that when they came to take the question the next time, he carried his point by the unanimous vote of the whole House. [Laughter.] I do not say that we want to send missionaries into either side of the House, but it seems to me, when the gentleman from Lowell speaks of this proposition being a compromise, that it is time we should require some missionaries to look into it and see whether it is a compromise or not.

But, I do not wish to occupy the time of the Convention. I suppose it is all settled; and I feel, and I have no doubt the minority feel all the time, that there are certain measures which are put in here, that, however much argument may be presented on the one side, or the other, we are always voted down. Perhaps it is on account of strength, and perhaps it is on account of caucusing. But, I stand here on the Report made by the majority of the legislature last year, calling this Convention; I stand here as a humble advocate of the plurality system; and it was my hope, that this Convention, when it came together, would put that principle into the Constitution, or at least, that they would take the majority principle out of the Constitution, and leave the legislature to decide as the wishes of the people should direct. As it is now, we get nothing. We violate the principle of the gentleman from North Brookfield, and others who have advocated the majority principle; and those who have advocated the plurality principle, get nothing. While we asked bread, we got a stone. It amounts to the same thing; it may be a brick. [Laughter.] But, as the gentleman from Lowell may want a little time to explain this compromise, I will conclude, by asking for the yeas and nays, so that those who have stood up for principle against expediency, and contended for the right all along, may stand on the imperishable record, as having sustained the plurality system.

The yeas and nays were ordered.

Mr. WALKER, of North Brookfield. On a previous occasion, I have given my views with regard to the general principle in relation to the plurality system, and I gave my views as entirely adverse to that principle, believing it to be wrong, and consequently that it could only be productive of evil. When I saw the Report of this Committee, I looked at it with great interest; and, supposing it was a compromise, I was disposed to do everything I could, consistently, to meet the exigency of the case. But, when I saw that the third resolution provided that representatives should be chosen by plurality after the first trial, I was obliged to dissent from it entirely. It seems to me there is no sound policy in this Report. Our towns are democracies. They meet together, and they may try several times in a day, for the election of a representative; they may even have forty trials, perhaps, between the time when the meeting is called to elect representatives, and the meeting of the legislature. So that there seems to be no excuse that the power to elect by a majority, shall not be preserved to the towns. Shall we take it away? The idea of making one trial by majority, and then, if an election is not made, to allow a plurality to elect, I discard altogether. There is no statesmanship and no principle in the thing. If we are to have the plurality principle at all, let us have it at once. Then the question will be met promptly. By the present proposition, the several parties would have to put up their respective candidates, which some party would have at last, to withdraw; and hence, if we adopt a plurality system at all, I would much rather apply it in the first place than in the second.

Sir, since I last spoke on this subject, I have met a very intelligent gentleman from the State of Ohio, who has resided there many years, and he asked me the question, what we were going to do with regard to the plurality principle in this Commonwealth. I told him that it was proposed to adopt it. He says: "Do not take that course, if you do you will have the same results that we have had, namely: a general demoralization in political action. That is the consequence with us, and we deplore it. In all our elections we find it difficult to get a good man to stand as a candidate. For the moment we put up a good man, there are a half a dozen other men put up, some of whom are of disreputable character," and, to use his own phrase, "the meanest scamp is the most likely to be successful. Hence, intelligent and respectable men are

not willing to be put up, for the greater number of men you have as candidates, the less is the chance of the election of a good man." Such is the operation of the system everywhere.

I saw, also, a few days since, a gentleman from Alabama, who expressed great anxiety about our abandoning the majority principle. "If you do it," said he, "you will rue the day; you will cause a general demoralization in politics, as has been the case in Alabama. We are always troubled to get the first and best men to stand for any office, for the reason that when they have to run against many men, of indifferent character—and they know, that as a general rule, the man of the most indifferent character is quite as likely to be elected as any other—they feel that it is a disgrace to stand, and they will not do it. That is the general result."

As to the election of officers in large cities, there may be some reason for adopting this rule, but when you come to towns, there is no excuse for it at all. It must be merely on the ground that we are unwilling to take the trouble. But there is no difficulty in that; the towns have only to repeat their trials as long as they choose. It has been said, and cannot be repeated too often, that this is the great question of misrepresentation, or non-representation, and there is a great choice between them; for it is much better not to be represented than to be misrepresented.

We are about to provide a Constitution, which will give a House of some four hundred members, and that will be an objection against our Constitution; and if we adopt this plurality system, it is certain that that House will consist of nearly the full number; and that will make an additional argument against the adoption of our Constitution. On the other hand, if we provide that a majority shall elect, then it will happen that many towns will choose not to be misrepresented, and they will adhere to their candidates and their principles, and will not be represented in the House. What will be the consequence? The House will be reduced, perhaps, some fifty or a hundred members. Now, I maintain, that it is vastly more desirable to have such a result, than to adopt the plurality rule and have the House filled every year; because the people will not be any more represented under the plurality rule than under the majority rule, even if many towns are not represented.

Then there is another consideration with regard to the basis of representation. By the plan which we have adopted, if I understand it, eighteen thousand less than one-third of the population of the State, may choose a majority of seven in the House of Representatives. Now, shall we reduce that constituency still more by adopting the plurality system? We know that if the plurality system is adopted, it is more than probable that one-quarter of the population of the Commonwealth will choose a majority of the House of Representatives. I would like to know if it is right, if it is desirable; I would like to know if gentlemen suppose that it will be agreeable to the people of Massachusetts. I do not believe it will. Hence, it will be a strong argument against the adoption of the Constitution.

Sir, if you could have the majority principle retained, with regard to members of the legislature, I would not make any opposition to this Report. I do not say I would be content with it, for I would not be content with anything that I do not think right; but I would submit to it.

If it be in order, before taking my seat, I would move to strike out from the third resolution all after the word "election," in the third line. I do not wish to detain the Convention by farther remarks, having discussed the plurality principle at length on a previous occasion.

The PRESIDENT. It is not in order at this time, as an amendment is pending to the first resolve.

Mr. LORD, of Salem. If I understand the argument of the gentleman from North Brookfield, it is this: That in consequence of what he has heard from a gentleman from Ohio, and from another gentleman from Alabama, if the plurality system is adopted, the same result will follow here that has followed there. In Ohio, the meanest rascals get chosen; and in Alabama the most indifferent people. Now, if I had such a judgment of the people of Massachusetts, that there were more of them who would vote for the meanest rascals that could be thought of, than would vote for a good man, I would try some method to curtail their power; and I am not surprised that the gentleman from North Brookfield wants to do so. He cannot trust these people, because more of them will be willing to vote for the meanest rascal, than for a good man. But, differing from him, I believe the people are capable of self-government, capable of selecting good men, and that they will not pick out the meanest rascals. I believe that they will not be demoralized; that the adoption of the plurality rule will not cause a general demoralization; but that those men will be chosen whom the most of the people are in favor of. I am quite as unwilling to say that the people will select the most indifferent persons, as to say they will select the meanest rascals. I do not think they will take either course. I am rather inclined to adopt the opinion of the gentleman who now represents Wilbraham, (Mr.

Hallett,) that the adoption of the plurality system will destroy the third party, and having destroyed the third party, and made but two parties, I do not exactly understand how a person will be elected without a majority. When you get down to two parties, as the plurality principle brings it down, it is simply a process for concentrating the public mind upon an individual. Whoever supposed that the public mind uniformly fell upon the particular person who was to be elected to the office? We know, Sir, that in the primary meetings, where a candidate is to be selected, there is generally a great diversity of opinion; and that diversity of opinion is reconciled, and one person is selected and agreed upon. The same thing happens in all parties, and the number of candidates gets reduced, out of which the people are to select. It is not the selection of an individual by a majority of the people, because we know that a majority of the people are in favor, individually, of a particular individual; but because, by the political economy and political arrangement, there has been a concentration upon certain members who represent certain interests; and out of those numbers, one is to be selected. The plurality principle simply reduces the number of candidates, so that the public will be obliged to select one of two, instead of selecting from three or four; and generally speaking,—I put it as a matter of historical fact,—where the plurality rule prevails, there the candidate is elected by a majority of voters.

As a general proposition, that is true. I think there was an exception or two, perhaps, in the case of an election of representatives to congress, but they were merely exceptions. Take the country through, and you will find that where the plurality system prevails, no men get into office so frequently without receiving a majority of votes, as they do in Massachusetts where the majority rule has prevailed. Then why talk about this being an abandonment of the majority principle? It is one of the instrumentalitics by which the majority principle can be concentrated upon an individual. It is developing, and bringing out, and enforcing, the majority principle. Gentlemen say here, with a flaunt, that we have got into new company. Well, I want to know if, because men have become convinced that they are wrong, and have joined them, they must desert their old ground. We have had gentlemen get up here and say, this plurality system was always a good democratic doctrine, and we were always in favor of it. Do not these gentlemen know that democracy is progressive, and that among other things, they have compelled us, poor Whigs, to abandon some of our views as obsolete ideas? And I am sorry, that so soon as the Whigs are obliged to change their condition, that there is another party that whips around and feels it glory enough if they can be in opposition to these poor Whigs. I have not heard any reason given by those gentlemen who have all along advocated the plurality system, why they should change now. When we all seem to be coming to agree that it is the true ground, all at once some gentlemen say, because we have got new allies, we will, therefore, abandon our old notions. That seems to be all the argument there is.

Now, Sir, I desire to express only a very few words upon this subject, having already developed the principal thoughts which I rose to suggest, that the people of this Commonwealth will be gratified at the device of such an instrumentality as shall concentrate the votes upon the smallest number of candidates. There is not a voter in this Commonwealth, who cannot see clear through this proposition.

We may involve it in diplomacy here, if we will, but every voter in the Commonwealth will see and understand what these six large offices are put into the legislature for. There is no gentleman in this House who cannot tell what it is done for. I am a little at a loss to understand, I confess, how we are to manage this matter. There is a little inconvenience about the manner of choosing our governor. We have already almost unanimously voted, that we would choose him by joint ballot, and here we say that we will choose him by a concurrent vote. Sometime ago —so long ago that we have, perhaps, almost forgotten it—some time in month before last, the Convention determined, that, whenever the people did not choose a governor, he should be chosen by the legislature on joint ballot; and now we are to have it done by concurrent vote. I have no objection to the two propositions; I am willing to have them both put there; but, Sir, I desire to have those gentlemen who charge me with not confiding in the people, and who themselves do confide in the people, I desire to have them explain to me how it is that, under this system, the people cannot be deprived of their choice. For example, in this matter of governor, we change from four to three; one man has eighty thousand votes, another has seventy thousand, and another fifteen thousand, and there is no election. Now a majority of your House of Representatives are chosen by one-third part of the people, and you pretend that your governor is a representative of the whole people. Well, Sir, this majority of the House of Representatives, thus chosen by one-third part of the people, can exclude the individual who had eighty thou-

sand votes, and send up to the Senate the one with seventy thousand, and the one who had fifteen thousand. This is giving the governor to the people, and taking the House of Representatives from the towns—doing it with a vengeance! I remember to have heard the argument in favor of the distribution of power, that, inasmuch as the people have the governor, the towns ought to have the House; but one-third of the people of these towns voting thus, through a majority of the House, say that the man who has eighty thousand votes, shall not be governor, no matter even if the Senate, who do represent the people, want him. The popular majority may send to the Senate a majority in favor of the individual who has eighty thousand votes; but the towns send to the House a majority who are in favor of the individual who has only fifteen thousand votes; and of these three candidates, the House sends up to the Senate the seventy thousand man and the fifteen thousand man, to let them take their pick between them. I say, therefore, upon this hypothesis, you have no popular representation in the governor, you have no popular branch in the government. Your House is from towns—your Senate is from districts, chosen by pluralities; and, as gentlemen say here, pluralities are the same as minorities. Here the governor is forced upon the Senate, by the House chosen by the towns; and yet you say that there are two branches that represent the people, while the House represents the towns. Sir, the poor people, in this arrangement, fail of having any representation anywhere, except as it comes from the Senate. In this respect, as relates to the Senate, I address my remarks to those gentlemen who say that a plurality does not represent the people. I am of the opinion that a plurality does represent the people; and therefore, the argument relating to the Senate has no force in my mind, but it has and must have force with those gentlemen who say that the Senate is a representative of a minority.

If, Sir, it is desirable to establish any rule as a constitutional rule, it appears to me that the principle that the rule should be uniform, is so obvious to every mind, that it gains no force from argument or reasoning. We propose to say here, that certain officers shall be chosen by a majority, and certain other officers by a plurality. Has any gentlemen told why that line is drawn in that way? I have heard no reason given for it—I can see the reason for it—every-body can see the reason; but has anybody avowed that reason? Has any gentleman told us why it is that the line should be drawn as it is drawn? why the governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth, should be chosen by majorities, and all other officers by a plurality? Now, if we were about to make a rule on the subject, and have some officers elected by a majority and others by a plurality, what rule would seem reasonable and proper? I believe that the universal opinion would be in favor of a rule of this kind: that, in proportion as it is difficult to obtain a second expression of opinion from the same constituency, just in such proportion is the necessity for the adoption of the plurality principle. I would like to hear anybody undertake to controvert that proposition. I agree with the gentleman from North Brookfield, (Mr. Walker,) that it is not half so important for the town of Hull, which can vote forty times, and perhaps four hundred times a day—I am inclined to think that they could vote four hundred times between sunrise and sunset; but if they could not, Nahant could—it is not half so important for these little towns to choose their representatives by the plurality system, as it is that all the people of the Commonwealth should have a chance to choose their governor by the plurality system. The difficulty is nothing, in comparison—the inconvenience is nothing, in comparison; as the gentleman from Boston said this morning, the whole Report is in inverted order, and ought to be reversed or shifted end for end. I am glad that I had the concurrence of the gentleman from North Brookfield in that respect; the thing is exactly reversed, for in those constituencies which cannot be called together twice, you insist upon applying the majority principle; but in those constituencies which can be called together twice, without any considerable difficulty, you allow the election to take place by the plurality principle. Why is this so? It is nothing in the name of State officers, because one is a State and the others are local officers. I repeat, Sir, that there is no individual in this assembly who does not see why it is so, and yet there is no gentleman in this assembly who will tell why it is so. Every-body knows what it is for, and yet nobody will tell us what it is for. The gentleman from Lowell, who reported this resolution, knows why the Committee made these officers at large, through the State, to be elected by majorities, in preference to ocal officers, and yet I do not hear anybody say why. There is a reason, Sir, and it is a reason that has no force whatever with me in making fundamental law. We know something about what the popular will is—those of us who are willing to confide in the people—and we know that the popular mind has been for years demanding that the legislature should so alter the law that a plurality should

elect. And we know, too, that the legislature has gone a great ways, almost to the very verge of constitutional right, in altering the law upon this subject; and they have never made a single advance on this subject, which the people have not approved. They have made representatives to congress eligible by plurality on the second ballot; and has the first man in the Commonwealth sent up a petition to the legislature to change that law since? Not one. The people of the Commonwealth approved of it. I do not know a single individual who, this day, would wish to alter it. I say, also, that the majority principle has never been adopted by any people, or acted upon by any people, where the counter proposition received a respectable advocacy, for a single moment; or where the plurality principle has been carried into practice in a single election.

Are we then desirous of finding out what is the popular will? I do not care how much gentlemen charge me with change, or how much they charge those with whom I am accustomed to act, with change. The party that called this Convention, called it upon the open and avowed ground, that the plurality principle ought to be adopted—that we ought not to spend a week here in the organization of the government, and in managing and bargaining how the offices should be distributed. It was—I do not say the *known*—but it was the avowed object of those who called this Convention, to prevent that great evil of the organization of the government being delayed a whole week. I have heard it said, here or somewhere, that where there has been an abuse, that has lasted for fifteen or twenty years, and some particular individuals have got the benefit of that abuse, it will not do to stop it until every-body else has had a hand in it, and has had a chance to profit by it in the same manner; and then you can let the abuse be reformed. Well, Sir, here you have got a real abuse; but it seems that we must not touch it, until every-body has had the advantage of it. Here is a real evil; every-body knows and feels it to be an evil, that the organization of this government, where there is a distraction of sentiment in the public mind, must be delayed a week at the beginning of every year. It is an evil that has been acknowledged, and those gentlemen who reported in favor of calling this Convention, reported that it would be enough to pay all the expense of this Convention, if we could save the extraordinary spectacle, and the extraordinary cost of the non-organization of this government for an entire week every year. What has changed the minds of gentlemen upon this subject? If ever I was in favor of the majority principle—and, I cannot remember that I ever was—if I ever was in favor of that principle, these very delays, and difficulties, and abuses, have long ago disabused my mind of the idea that a majority was necessary. They say that a majority should rule; but who rules under the majority principle? Does a majority rule? No, Sir; never. A little band, a factious minority, rule, and always have ruled. How came that most excellent presiding officer, and much lamented man, to occupy the chair which you now occupy in this House, in that political year when the House was so divided, that the candidate of one party received just exactly as many votes as the candidate of another, and a certain individual of my own county, received one vote, and one vote only? The other two great parties gave exactly an equal number, and that gentleman received one vote only; but he held that one vote until enough to make a majority came to him; and the majority ruled, did they? I say it is always so; there is a fallacy in this mode of argument that a majority should rule. It is putting it into the power of a small portion of the people, to defeat the whole great bulk of the people; that is the operation of the majority system. Thus a very small proportion of the voters of this Commonwealth, can throw these six offices, as articles of merchandise, into the House of Representatives. I want to keep them out of it. I do not believe in that philosophy at all, which we have heard here so many times, that the gentleman who receives the smallest number of the votes of the people, if he shall get a majority of the votes of the House, and of the Senate, will thus be a majority governor. That is the sublimation of political mathematics, which goes beyond my comprehension. A man who gets less than one-third part of the votes, somehow or other, comes up here, and goes, as they say, into a most unequal House—they always say it has been very unequal—which unequal House has filled up the Senate full. We have a House not representing the people at all; and the man who receives less than one-third part of the votes is passed from the House to the Senate, and is made, by some *hocus pocus* which I never could exactly understand, a majority governor. I have heard it assumed here a great many times, that such a gentleman as that, is in reality elected by a majority of the people.

I cannot understand that. I think that if the majority of the people very particularly want a man, they will be very apt to vote for him. Now and then you may get a few voters, here and there, who will vote contrary to their own notions of what is right,—of course it is not to be wondered at that some few among the people should do so, when we find the same thing done by gen-

tlemen in this Convention,—and others, again, vote as they are told to vote; but the great majority of the people vote as they please, with perfect independence; and when we introduce such a system as to bring the people to vote in such a manner as to get a majority vote upon any question, then we shall best advance the interests of our constituents, and promote that public good which we were sent here to accomplish. Anything to concentrate, as I said in the beginning——

[Here the hammer fell.]

Mr. FRENCH, of Berkley. I have always been in favor of the majority system, and I cannot, now, very well make up my mind to give it up. I have an amendment, which I desire to offer to the third resolution, which, I think, will make it stand a little better. It is this: after the word "ballot" insert the following:—

But in case of the failure of election on such ballot, then at a subsequent meeting, called for that purpose, the person having the highest number of votes shall be deemed and declared to be elected.

The whole resolution, if thus amended, will then read——

The PRESIDENT. The amendment is not in order at this time, but the gentleman from Berkley will, no doubt, have an opportunity of offering his amendment.

Mr. FRENCH. Then, if my amendment is not in order, I suppose it is not in order to make any remarks.

The PRESIDENT. The whole question is open to debate on the first resolution.

Mr. WILSON, of Natick. It seems to me, Mr. President, that it is rather too late to go into a general discussion upon this question. Some weeks ago this subject was discussed with great ability for several days, and a vote was taken in the largest Committee of the Whole that we have yet had; we had a larger vote than we have had upon any question which has been taken during the session. The judgment of the Convention was: that for governor, lieutenant-governor, and the other State officers, a majority should be required; that for members of the House of Representatives, and town officers, a majority should be required. The judgment of the Convention then was: that for senators, and county and district officers, a plurality only should be required to elect.

Mr. SCHOULER. I wish to correct the gentleman. There has been no vote taken in the Convention upon this question.

Mr. WILSON. The gentleman from Boston is, I think, hypercritical. There was a vote taken in Committee of the Whole, which I apprehend is pretty much the same thing; and I say that a larger number of members were present, and voted on these questions, than have been present on any contested point during this session. I believe that the vote stood 187 to 188. The question was then recommitted to a Committee; and I understood that at that time it was generally conceded, that the judgment of the Committee was to stand as the judgment of the Convention, for the reasons which were then given.

Now, Sir, I am in favor of a majority, out and out. I adhere to that principle. I would accede, however, to the plurality system in the election of district and county officers, and senators, for they must be elected by the people. I would consent that it should stand as reported by the Committee; but, in regard to the election of representatives and town officers, I am opposed altogether to the Report of the Committee. I do not believe that it is expedient for the Committee to place a provision in the Constitution authorizing our town officers to be chosen by a plurality. I doubt very much whether the people themselves wish or desire it.

The gentleman from Boston, (Mr. Morey,) the old political war-chief of the Whig party of the State, came out to-day, and pressed upon us the necessity of going for the plurality system, although he says that he is in favor of a majority system. They put it on the ground that the address put forth by the gentleman for Erving, and other gentlemen of the legislature, in 1852, represented this plurality system as one great object to be achieved by the proposed Convention. Now, Sir, it is common for gentlemen, in advocating questions here, to say that the people are on their side. I take it, that we do not know what the judgment of the people is upon this question. I can say that through the canvass of last year, the political friends who acted with me did not advocate the plurality system. The press which supported the political organization with which I act, did not advocate the plurality system in supporting the call for the Convention. On the contrary, the thirty-six thousand men who gave their votes for this Convention, in November last, were generally opposed to the plurality system, and are so to this day. I know the Democratic party generally goes for the plurality system. Some of them advocated it then, and many do so now. They, however, are here to speak for themselves. But as to the Whig party, all that we know of their opinions is, that they went into their State conventions, and denounced the Convention as an untried and hazardous experiment; got up at an

expense of $250,000, to break down the Constitution of the Commonwealth, and to change those great principles which had constituted the glory and strength of the State; that we were about to strike at the independence of the judiciary, and at everything which was great and glorious in our past history. And more, Sir. My friend from Boston, (Mr. Schouler,) who advocates the plurality system, was one of the gentlemen who signed the minority report denying the constitutionality of this Convention, although I will do him the justice to say, that, on the floor of the House of Representatives at the time, he said he did not concur in that doctrine.

Now, in relation to this matter, I hope that this Convention, if it is to take any portion of this plurality doctrine, is to apply it where it is absolutely necessary to apply it, and nowhere else; that we are to stand by the majority system where we can get along well with that system. It would be difficult to send back a State officer to the people for reëlection, and therefore, we provide another mode of election. We provide for the election of county and district officers, and senators, by the plurality system. But, Sir, the people of the towns can elect their town officers and representatives; and if necessary to do so, they can meet from day to day in order to do it. If there be any necessity for their having representatives here, they can govern themselves by that necessity.

If I had my wish, I would like to strike out the third resolution, altogether, and substitute the following in place of it :—

*Resolved*, That the Constitution be so amended as to provide that in all elections of representatives to the general court, when no election is effected at the first trial, the meeting shall be adjourned from time to time until the meeting of the legislature for which the said representatives are to be chosen: *provided*, that no one adjournment shall be for a longer term than six days.

When it is in order, I propose to move that as a substitute for the third resolution, and to strike out the fourth resolution, altogether.

Mr. BRADBURY, of Newton. I do not propose, Mr. President, to trespass upon the time of the Convention, at any length. I have not done so in regard to any of the great questions which have been agitated before it; but I wish to say a word or two upon one point. The gentleman from Salem, (Mr. Lord,) has, in part, anticipated what I intended to say. Gentlemen who have looked through the whole history of this question, will readily perceive what I mean, and the point which I wish them to consider.

The Report of the Committee on the basis for the House of Representatives was presented to this Convention, and defended by the chairman of the Committee, upon the principle of checks and balances, expressly and emphatically, basing his comments on a text from De Tocqueville, in which he proves that majorities are dangerous—that they might prove to be tyrannies, and therefore, he contended for municipal representation in order that they might be a check—upon what? Why, Sir, upon popular representation. So he then argued; and those who followed him have so argued throughout this whole debate, in favor of the representation of municipalities, because they say they want a check upon the masses in the cities, and the Convention has justified the arrangement on the ground of checks and balances. Yes, Sir, it has been said over and over again, that because the governor and Senate were chosen by the people directly, and on the municipal principle, that therefore you were justified in departing from that principle in regard to elections for the lower House. Sir, when was this argument presented? It was after you had discussed the question whether the supreme executive and the highest officers of the State should be chosen by a plurality or a majority, and had taken it away from before the Convention with a balance vote. And what is done in this Report? In case of the failure of the people to elect a governor, you have what you suppose to be a remedial process in the House of Representatives, and yet you have defended the basis of that House on the ground of a system of checks and balances. Sir, to have been consistent with the argument which has been taken as a groundwork of the basis of the House of Representatives, you should have given to the Senate jurisdiction in case of the failure to elect on the part of the people. Then you might have said that the House of Representatives must be submitted to, because it was an offset to the popular principle implied in the other two departments of the government.

If the Convention will allow me for a few moments, I will quote what was said upon this floor in defence of the town representation principle. The gentleman for Erving, in his remarks on this subject, read the following passage from De Tocqueville:—

"Unlimited power is in itself a bad and dangerous thing; human beings are not competent to exercise it with discretion, and God alone can be omnipotent, because His wisdom and His justice are always equal to His power. But no power upon earth is so worthy of honor for itself, or of reverential obedience to the rights which it represents, that I would consent to admit its uncontrolled, and all-predominant authority. When

I see that the right, and the means of absolute command are conferred upon a people or upon a king, upon an aristocracy or a democracy, a monarchy or a republic, I recognize the germ of tyranny, and I journey onward to a land of more hopeful institutions."

That is the text. Now we have the comment of the chairman of the Committee, which has been carried out and amplified in a number of lectures since. He proceeds :—

"This great writer, who seems to have reflected profoundly upon the workings of our institutions, says, that it is not safe to put power into the hands of an uncontrolled majority, in the sense in which it would be if the district system prevails. You must have a system of checks for this great majority of numbers. And this brings me to my last reason in favor of this system, which is the doctrine of checks and balances."

What is the proposition here? Why, we propose to elect the governor and council in single districts, directly by the people. We propose also to elect the Senate by the people, in single senatorial districts; and then we propose to elect the House of Representatives by towns, varying the system so far as towns are concerned, by basing it, to a certain extent, upon population; and these features, taken together, will, I apprehend, make the most perfect system of checks and balances that you can have. The people will be represented in the Senate of Massachusetts, and no measure can be passed or defeated in that body, which a majority of the people either dislike or approve. They will be potential in that branch of the legislature, and as they elect the governor directly, he will also represent the whole people. There is the security for the people of the Commonwealth. Then, if you base your House of Representatives upon towns, mixing with it the population basis, so far as it is practicable, you will have, in one representative from each town, a check upon centralization, and also a check upon the other branches of the government, so that it will be on the whole a very safe and practicable system of government.

Sir, this has been the doctrine, in various forms, advanced in this House, for the defence of the right of town corporate representation, and as justifying a departure from the popular principle.

And now we have here, a proposition before us, which is almost certain to transfer, in a majority of cases, the election of governor somewhere else. And what has been done? What was required to be done, in good faith, after this declaration of doctrine? What was the duty of a majority of this Convention, after holding forth this doctrine? Was it to send the election of governor to the House of Representatives in the first instance? No, Sir. In consistency with their principles, as declared here solemnly and repeatedly, it was their duty to place the remedy where the people would exert that remedy. But what are the facts? Why, we have, in the basis of the House of Representatives, as wide a departure from the numerical principle, as the one prepared and defended by the chairman of the Committee, (Mr. Griswold,) when his remarks were made, from which I have already quoted. We have a basis which gives, in the beginning, now, a majority of the House of Representatives to one-third of the people of Massachusetts. You have established, by adopting the proposition of the gentleman from Lowell thirty minutes before you were stopped from saying a word upon the subject, a principle which qualifies and moulds the basis of the House of Representatives—which moulds, and shapes, and transforms it more than any man in this Convention could tell, in the time allowed him, unless he is a mathematician beyond any precedent we have ever had. There are gentlemen who probably did know it, but I say to those who had not examined it, that no man can tell what effect the proposition will produce. What will it produce? It does not alter the House for the first ten years, but it allows one-third of the people to hold a majority in the House of Representatives. In 1860, according to the ratio used in the pamphlet prepared by the ex-secretary of state, the member from North Brookfield, (Mr. Walker,) and which is a perfectly safe ratio to use—(I wish to say that here, because it has been often said that the future is all an uncertainty, but I do not so consider it, for Massachusetts is an exception to the general rule that ratios of increase diminish after a state reaches a certain number of inhabitants. Her ratio is an ascending one, and, therefore, the report to which I have alluded is perfectly safe upon which to base our calculations)—in 1860, I say, the growing towns will have more than their specified number, by these tables, because their increase will be by an increasing ratio. The rule is, that after a state has grown to a certain degree, its farther increase is by a descending ratio; but Massachusetts is an exception to that rule. If that conclusion is right, one-third part of the people of Massachusetts will make the governor, if the people fail to elect him now. In 1860, one-quarter part of the people of the Commonwealth will make the governor, if the people fail to elect him. In 1870, one-fifth part of the people will make him, if the people fail of an election.

Well, Sir, we had an implied, if not an express

pledge, in the arguments of those who prepared this basis, that there should be, in good faith, a system of checks and balances; but instead of that, we have a system proposed which throws away the rightful expectations of all, and throws into the House of Representatives the power to make a governor when the people fail to elect him.

Mr. OLIVER, of Lawrence. I move that the Orders of the Day be laid upon the table.

The question was taken, and the motion was agreed to.

*Amendments to the Constitution.*

Mr. HALLETT. There is a subject upon the calendar which, I think, may be disposed of this evening. It stands in the list of unfinished business, and is document number seventy-five of the Convention, relating to the subject of Amendments to the Constitution. I move that the Convention resolve itself into a Committee of the Whole upon that subject.

The question was taken, and the motion was agreed to.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Wood, of Fitchburg, in the chair, and proceeded to the consideration of the matter referred to.

The CHAIRMAN stated the question which was pending at the time the Convention was last in Committee of the Whole upon the same subject, to be the motion of the gentleman from Bridgewater, (Mr. Hale,) to strike out the second resolve, which is as follows:—

*Resolved*, That it is expedient farther to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the Secretary of the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question as though it had been propounded by the legislature; and if, upon a return to the governor and council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

Mr. HALLETT, for Wilbraham, proposed to amend, by inserting the following as a substitute for all the resolves:—

*Resolved*, That it is expedient to provide in the Constitution, that a Convention to revise or amend this Constitution may be called and held in the following manner: At the general election which shall be in the year eighteen hundred and seventy three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes, to be received, counted, returned and declared, in the same manner as by law is provided in the choice of general officers at such election, upon the question: "Shall there be a Convention to revise the Constitution in conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of Delegates of the people for the purpose of revising the Constitution?" and if it shall appear, by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and thereupon delegates shall be chosen on the first Monday of March next succeeding, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the same manner and with the same authority as is provided in the second, third, and fourth sections of said Act.

The general court shall have power and authority in any year other than the year above specified, to submit to the people the same proposition, to be voted on in the same manner, at the next ensuing general election; and if it shall appear by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and thereupon the same proceedings, with the same powers and authority, shall be had, as is provided in the foregoing clause of this Constitution.

The foregoing provisions, shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, at all times, to reform, alter, or totally change their Constitution and frame of government.

The CHAIRMAN. The Chair is of opinion that the motion of the gentleman from Bridgewater, (Mr. Hale,) has precedence of the amendment of the gentleman for Wilbraham, (Mr. Hallett,) and that the latter amendment will be in order after the question shall have been taken upon the first motion to strike out the second section of the resolves.

Mr. HALE, of Bridgewater. The object I desired to accomplish, when I made the motion to strike out the second resolve, was explained at the time. The motion made by the gentleman for Wilbraham seems to be an entire new prop-

osition, and one which seems to me to require very grave consideration before it shall be adopted by this Convention. By simply hearing it read, it appears to me, that there are provisions there which we should be very cautious about adopting, and therefore, as the amendment proposed by the gentleman for Wilbraham has not been printed, and as the members of the Committee have had no time or opportunity to examine its details, I would suggest that the Committee now rise, report progress, and ask leave to sit again, in order that the proposition of the gentleman for Wilbraham may, in the meantime, be printed.

The CHAIRMAN. The Chair would suggest that if the gentleman from Bridgewater should withdraw his own motion, then the motion of the gentleman for Wilbraham will be in order.

Mr. HALE, of Bridgewater. I do not wish to withdraw my motion, until I know something more about the amendment of the gentleman for Wilbraham, and my object is to give the gentleman time to have his amendment printed.

The CHAIRMAN. Did the Chair understand the gentleman to move that the Committee rise, report progress, and ask leave to sit again?

Mr. HALE. I made that motion.

Mr. HALLETT. I think there is no difficulty in the Committee's understanding this proposition now. My proposition does not essentially vary the import of the Report of the Committee as contained in the second resolve. It is only intended to carry out the intention of that Report, as I think, more definitely and distinctly. I hope, therefore, as the gentleman from Bridgewater desires it, that the question will be taken upon his motion, and then we can proceed to the discussion of this amendment, and we have time to explain and understand it; and if I can have time for a brief explanation, there is no necessity for having it printed.

Mr. HALE. It seems to me that the proposition of the gentleman for Wilbraham is to incorporate into the Constitution the details of the Act of 1852, concerning which there is so much difference of opinion in this Convention, and out of it; and I, for one, am not willing, with so much haste, to incorporate it into the Constitution, and I think we had better take time to examine and look into it.

The question was then taken upon the motion of Mr. Hale, that the Committee rise, report progress, and ask leave to sit again; and it was decided in the negative—yeas, 28; noes, 76.

So the Committee refused to rise.

The question was then taken upon the motion of the gentleman from Bridgewater, (Mr. Hale,) to strike out the second resolve, and it was decided in the affirmative.

So the second resolve was stricken out.

Mr. HALLETT then renewed his motion to amend, by substituting the proposition which he had submitted for the resolves reported by the Committee.

Mr. HALLETT. I desire very briefly to explain the proposition I have just offered. In all its leading characteristics, it conforms to the Report of the Committee, except that it does not put the Convention in the power of the legislature. It provides with more caution, as I think, for carrying out the object designed by the Committee in their Report. That Report embraces three distinct propositions.

First, that periodical Conventions may be called for revising the Constitution every twentieth year. We desire that that shall be done by a law—a constitutional and fundamental law—which shall execute itself, so that the people hereafter shall have no occasion to be dependent upon the legislature for its action, and so as to avoid the possibility of the people and the legislature coming in conflict with each other upon the subject.

The second provision is, that the legislature shall have power to submit a proposition for a Convention to the people at other times than at these stated periods. Many believe that under the present Constitution, the legislature has not that power. I believe it has not. We want now to place the provision in a form which cannot be mistaken; and farther than that, when the legislature submits such a proposition to the people, and it is adopted by the people, we want that it shall become the will of the people, requiring no subsequent action upon the part of the legislature, and subject to no repeal by another legislature of different party politics.

Thirdly, we desire, behind and beyond this, to reserve to the people the right to alter and amend their fundamental law, whenever they think proper, in the exercise of their sovereignty.

Now, Mr. Chairman, I believe there is no delegate to this Convention, holding the republican doctrine of the right of the people to control their own government, who will not say that these propositions are right. The only question for us to determine, then, is, does the proposed amendment carry them into practical effect? I have given the subject a good deal of examination; and more than that, I have consulted with many members of the Convention relative to this proposition, and I think it will meet the enlightened and deliberate judgment of a majority of the Convention; I am also happy to say that the proposition meets the concurrence of the chairman of the Commit-

tee (Mr. Nayson) which reported the resolutions now under consideration.

Now, then, I will briefly refer to the details of this proposition to see if it meets my object, and the object which we all have in view. It is substantially the same proposition as that embraced in the Constitution of 1780, which provided for calling a Convention in fifteen years after its adoption. The only difficulty in relation to that proposition was, that it required action upon the part of the legislature to call the Convention and prescribe its powers. It failed of its object because, when the fifteen years had expired, the legislature either took no action, or took such action that the Convention failed to be called. It required a two-thirds vote, which defeats it of course; and ever since that failure, the people have been taunted and told that when that Convention failed to be called, they lost their right to amend their Constitution in any other way except by such amendments as the legislature chose, from time to time, to submit to them. Hence, it is important, in the new Constitution, to avoid that difficulty which was met with in revising the Constitution of 1780. And what is the provision before us? It declares that the question "Shall there be a Convention?" shall, in 1875, and in every twentieth year thereafter, be voted upon by the people, at the annual election, at which time the qualified voters in State elections of the cities and towns of the Commonwealth shall give in their votes, to be received, returned, and declared in the same manner as is by law provided in the election of general officers.

By this provision, it follows, if there are any selectmen in towns, or any inspectors in cities, to return votes, in short, if there is any law by which votes are to be received in general elections—by which they are to be returned, counted, and declared, then that law applies to this mode of voting upon the question, so that every citizen who has the right to vote in State elections, may go into the town meeting, in every one of these twentieth years and deposit a vote upon the question—yea or nay. Of course, these votes of "Convention," or "No Convention," will be provided, if there is any call for them, and every voter may give in his vote, yea or nay. If a majority of the votes in the Commonwealth are in favor of a Convention to revise the Constitution, after the manner of the act of 1852, then that shall be construed as the will of the people. The Act of 1852, has in fact, become the uniform mode of holding Conventions. It is the same as that of 1820, by which the Convention of 1820 was called. These acts embody all necessary details, and are generally understood and approved of, so far as the direct act of calling and holding a Convention is concerned. They are almost *verbatim* the same, and it has become almost a common law mode of proceeding, by which Conventions shall be called. Then, if the majority of the people say "Yes," what follows? Why, this Act shall be taken to be the will of the people, and the Convention shall be called accordingly. And thereupon the people will proceed, on the first Monday in March following, under the forms of law governing elections, in all the towns, to choose delegates to represent them in a Constitutional Convention. You require no action upon the part of the legislature, from first to last. You have got your law here, which, if accepted by the people, is to be the declared will of the people, and must be carried into effect accordingly. The selectmen in the towns, and the inspectors in the cities, must call the meetings, or be liable to penalties. They must receive the votes for delegates, who are to be chosen to meet at the State House, on the first Wednesday of May, following. Thus you will have the whole process and form of law for calling a Convention, provided for in the Constitution, so that no act of the legislature will be required to call it, and no alteration or repeal can be made by any subsequent legislature. I think, therefore, that this provision is complete, so far as the holding of a Convention every twenty years is concerned.

But, if the people do not desire to have a Convention, then the nays will have the majority when the vote is taken upon the question. That vote will be proclaimed, and that will be the end of it. I cannot see what other provisions are needed for holding these periodical elections. The Act of 1852 becomes a Convention law, just so far as it is applicable to the year the Convention is held.

The second proposition relates to the power of the legislature for submitting the question of calling a Convention at times other than at these specified periods. I want that the legislature should have express power to do it, and I want that power should be put in the Constitution; because, I trust that hereafter we shall have no powers exercised by the legislature which are not in the Constitution. And what is this provision? It is that the general court shall have power and authority in any year between these specified periods, to submit the same question to the people, to be voted on in the same manner, and the returns to be received and declared in the same manner as is provided for in the case of the periodical elections. And if a majority of the people are in favor of calling a Convention, the same proceedings are to be had as are provided for in the first clause of this amendment.

Now, what is the effect of that? The legislature at any time, may vote to submit the question to the people: "Shall a Convention be called according to the Act of 1852?" The people vote upon that question in the several cities and towns —these votes are returned, counted and declared, and if there is a majority in favor of calling a Convention, then the people proceed on the first Monday in March to elect their delegates, who shall assemble in the State House on the first Wednesday of May following, in the same manner and with the same powers as is provided in the 2d, 3d and 4th sections of the Act of 1852. No subsequent act upon the part of the legislature is required, and no subsequent act can change or defeat the expressed will of the people. The legislature, simply by an act of theirs, submit the question to the people, and if the people vote, a majority of them, in favor of the Convention, the matter is then beyond the control of the legislature; and no action of theirs can affect it. I think these two propositions will cover, substantially, any case that may arise, because if a majority of the people want a Convention, they will have a majority of delegates in the legislature who will vote to submit the question to the people.

But, still, there may an extreme case arise, when the people will desire to call a Convention outside of any provision upon the part of the legislature. When more than the voters, the whole community may claim to act. And this third clause provides for that extremity. It is an extreme case, and I can hardly see how it could ever occur under our system of government. But still, if the legislature should come to represent the minority of the people, they might refuse to submit the question when a majority of the people desired it, or the whole people might demand a different basis for a Convention. But even in this case, if the people could have a Convention once in twenty years, I think they would sooner wait for the return of the regular period, when the question must, as a matter of necessity, be before them, than to take the matter into their own hands. But then, I want that they should have the right of amending their Constitution at all times, without a revolution; and therefore it is proper to make a provision which shall reserve to them that right, which the Bill of Rights declares they should have, to reform and alter their Constitution; and this is put in form, to prevent any construction of the courts against that great popular right.

The whole proposition, taken together, guards the process by which the people can act in enforcing that right without being dependent on the legislature to move first, and thus it carries out that view and enforces, in the most practical manner that can be done in the Constitution, the admirable doctrine which was laid down at a very early period in this excellent work which I hold in my hand, and from which I have read very often in this Convention. It is a very remarkable book. It was published in 1775, by Robert Bell, of Philadelphia, under the direct patronage of Washington, Franklin, Hancock, Jefferson, and all the great revolutionary statesmen of that day, for the purpose of imbuing the people of this country with right opinions of constitutional liberty. It is the very book that was quoted from by Dr. John Warren when he delivered his oration on the fourth of July, 1783, that being the first fourth of July oration ever delivered in Boston. The book is entitled "BURGH'S POLITICAL DISQUISITIONS;" and I must again ask the attention of the Committee to one or two passages which I quoted on a former occasion. He says, p. 456, of vol. iii.:—

"As the people are the fountain of power, and object of government, so are they the last resource when governors betray their trust. And happy is that people, who have originally so principled their Constitution, they themselves can, without violence to it, lay hold of its power, wield it as they please, and turn it, when necessary, against those to whom it was intrusted, and who have exerted it to the prejudice of its original proprietors."

Again, he says:—

"In planning a government, by representation, the people ought to provide against their own annihilation. They ought to establish a regular and constitutional method of acting, by and from themselves, without, or even in opposition to their representatives, if necessary!"

Now, Sir, that is a lesson for us. It is precisely the point to which I think these resolutions should be carried, and embodied in the Constitution, so as to enable the people to alter and amend their Constitution without ever coming in conflict with their own government, under any circumstances. Such instances of conflict have occurred in other States; and it is known to this Convention, that during the early period of its session, we were told that the Convention was entirely at the mercy of the legislature, which could, at any moment, by repealing the Act under which it was called, render its session unlawful. I therefore hope we shall provide, in the new Constitution, against any such possible emergencies, or conflicts, and remove all the doubts and denials of the lawyers as to how we are to collect the will of the people

without the consent of the legislature. And we should adopt this, not only as a great popular measure, but also as a conservative measure, a peaceful measure for reforms and changes in government, by the popular will, without danger, and without the necessity of resorting to physical revolution. That is my sole purpose, and if it can be secured in this mode, or in any other which shall be found adequate to the purpose, I shall be satisfied that the great and inherent will of the people, which is now denied to them by courts and lawyers, has been affirmed.

Mr. GILES, of Boston. I do not rise for the purpose of opposing the amendment of the gentleman for Wilbraham, (Mr. Hallett,) because I said the other day that I agreed with him in reference to this subject. I have seen the amendment now before us, and the only objection I have to it is its length and complexity, which I fear will impede its adoption, if not defeat it entirely.

The difficulty in incorporating a Convention law into the Constitution is, that if it goes into specific provisions, it is too long; and more than that, it undertakes to settle details which should be left to posterity. I agree with the gentleman for Wilbraham, and I believe he agrees with me, that we do not wish to say in the Constitution that it shall be constitutional to violate the Constitution; nor do we wish to say that it shall be legal to violate law. When a revolution comes, basing itself upon the right of revolution, it will declare itself, and needs no declaration from us beforehand. What we wish is, to secure to the people the right of amending their Constitution whenever they see proper; so that when they declare their will to that end, no hostile legislature shall ever have the power to come in and baulk them in their purpose. And when I say the will of the people, I mean that will legally expressed. I mean the people in the legislature, otherwise the people in the towns at one end of the State might vote for one proposition, and those at the other end for another, and their votes would bind nobody. What I want is, the will of the people in the legal sense; that the popular voice, constitutionally expressed, shall be considered and recognized as obligatory. I want it to have "free course, to run and be glorified;" I speak it with deference.

Now, I should be content with this first resolution. In fact, I should prefer the first resolution, with an addition which I shall read for information, and which, at a proper time, I propose to offer. I shall be willing to strike out the second and third resolutions entirely. The language of the first is a little objectionable, but I take it the Committee on Revision, will take care of that. I say, then, that I should rather prefer the first resolution, with this addition:—

And the right of the people at all times to amend that constitution of government, by Convention or otherwise, according to their will, legally expressed, shall never be restrained or obstructed in this Commonwealth.

It seems to me that this will secure all that is necessary for us to secure in the Constitution. It will provide, that when the people have signified their will, the legislature shall not obstruct or restrain that will; but on the contrary, that they shall promote and assist in carrying it into execution. So that, if the people have willed a Convention, and in the mean time the State House should burn down, it would be the duty of the legislature, if in session, to provide another place for the meeting of the Convention. Or if any other unforeseen event should intervene to render legislation necessary, the legislature, if in session, should perform it with a view to carry out the will of the people. I will go any length to secure that object. If it should be thought advisable to go farther than that first resolution, with the addition I have indicated, and have a Convention Act incorporated into the Constitution, you must do one of two things: You must either adopt, as a part of your resolution, the Convention Act of 1852,—which is the same as that of 1819,—and entail that for substance and detail upon posterity, whether it will suit or not, or you must depend upon the intervention of the legislature.

I have drawn up a Convention Act, which I should prefer, if the Committee would go that length, as a substitute for the one offered by my friend for Wilbraham, (Mr. Hallett,) for the reason that, instead of calling upon the people to vote whether they want a Convention, and then to vote for delegates to that Convention, or depending upon future legislation, or incorporating existing law into the Constitution, it will secure a Convention once in twenty years. I will read it for the information of the Committee, and as a part of my remarks:—

*Resolved*, That the qualified voters in State elections, in the several cities and towns, shall, in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, and as much oftener as shall be required by law, elect Convention Delegates, in conformity with the law then in force for the election of representatives; and the delegates so elected shall meet at the State House on the first Wednesday of May next after said election, and when organized, with not less than one hundred members as a quorum for

the transaction of business, may consider, and adopt, and submit to the people for their ratification, such amendments of the Constitution, as shall be deemed best; and the right of the people, at all times, to amend their constitution of government, by Convention, or otherwise, according to their will legally expressed, shall never be restrained or obstructed in this Commonwealth.

Mr. CHURCHILL, of Milton. I am opposed to the proposition which has been submitted to us upon this subject, because I see no good reason or sense in it. It seems to me it is an attempt to foresee, for fifteen or twenty years, when the people of this Commonwealth will need and require a Convention to reform their Constitution, which we had better leave to the people themselves. I contend that we should leave the matter as it stands in the Bill of Rights, and upon the precedent set in calling this Convention. The Bill of Rights declares nearly all that the gentleman from Boston, (Mr. Giles,) who has just taken his seat, has embraced in his proposition, and the precedent cited for calling this Convention will enable the people hereafter, when they desire a Convention, to demand of the legislature that they shall pass an act for that purpose. It seems to me that such a proposition as this is nothing more or less than subjecting this subject of calling a Convention to the decision of political parties, and the party which is dissatisfied with the operation of the Constitution, will be perpetually submitting a proposition for calling a fresh Convention. I think the people hereafter will be able to settle better than we can, when they need a Convention; and when they need it, they have a precedent and Bill of Rights, to which they can resort.

I move that the subject be indefinitely postponed.

Mr. WILSON, of Natick. The proposition made by the delegate for Wilbraham, (Mr. Hallett,) is rather a lengthy one.

Mr. ASPINWALL, of Brookline. I rise to a question of order. I suggest that there is not a quorum present.

Mr. OTIS, of Sumner. I move that the Committee rise, report progress, and ask leave to sit again.

Mr. WILSON. I believe I have the floor.

The CHAIRMAN. The Chair understands that the gentleman from Natick has the floor. The gentleman from Brookline rises to a point of order, but the Chair cannot see how that can be properly made at the present time. Therefore, the gentleman from Natick will proceed.

Mr. ASPINWALL. Will the Chair allow me to suggest that the Committee cannot sit if there is no quorum present?

The CHAIRMAN. How are we to ascertain that fact?

Mr. ASPINWALL. By a count taken by the moderators. That is the way it is done in the House of Commons, or any other legislative body.

The CHAIRMAN. The Chair is of the opinion, that while the gentleman from Natick is occupying the floor, that a motion for a count is not in order.

Mr. WILSON. It seems to me, Mr. Chairman, very strange, that gentlemen who are daily and hourly pressing upon the Convention the importance of closing our labors here, should find it convenient to themselves to be absent so much of the time. Some of us are left here, however. I suppose those who are here at this hour, are governed by a sense of public duty in remaining; and, therefore, we had better proceed to do the business before us. The proposition made by the delegate for Wilbraham, (Mr. Hallett,) is a lengthy one, and therefore we cannot fully comprehend it, unless it be printed, and we have an opportunity to examine it. The gentleman from Boston, (Mr. Giles,) has already presented another proposition. It seems to me, that a plain, clear, and distinct proposition, can be prepared, and incorporated into our amended Constitution, providing for future amendments. Some gentlemen of the Convention think it unnecessary to have any such proposition inserted in the Constitution. I do not agree with these gentlemen, in that respect. Some gentlemen think that such a provision would be a limitation of the power of the people. I do not so understand it. In the debate upon the Berlin case, the judgment of this Convention was, that the people have a right to amend their Constitution without going to the legislature for authority so to do. Now, gentlemen propose to leave the Constitution, in this respect, precisely and exactly where it is at present. We know that nearly all the eminent lawyers of Massachusetts, believe that we are sitting here without any constitutional authority—that this Convention is an unconstitutional body. My friend for Manchester, (Mr. Dana,) shakes his head, but does he not know that in the canvass of 1851, that, for party purposes, the judgment of the learned and distinguished gentleman from Cambridge, (Mr. Greenleaf,) and professor in the law school, who addressed the Convention the other day, was taken as an opinion, and that he declared the call for a Constitutional Convention was not constitutional? Another eminent lawyer of Boston, Mr. Charles G. Loring, a man whose opinions upon legal subjects are not surpassed by any other man, perhaps, in Massachusetts, gave it as his deliberate opinion, that the

Act of the legislature calling this Convention, was an unconstitutional Act. The present governor of Massachusetts, in his address to the legislature, declared that Act to be of doubtful constitutionality. I know that some members of the existing supreme court, have expressed the opinion that the Act is unconstitutional. I know that Ex-Judge Wilde, who was for thirty years and upwards a member of the supreme court, has expressed that same opinion. And I say that four-fifths of the eminent Whig lawyers of Massachusetts, believe to-day, that we are sitting here in a body not called in accordance with the Constitution of Massachusetts. It was just so in 1820. The eminent legal gentlemen of that day denied the constitutionality of that Convention. I believe Judge Parker charged the grand jury upon the subject of that Convention. In the Convention of New York, held in 1821, Mr. Tallmadge, a leading man of that day in that Convention, declared that body to be unconstitutional. This question of the sovereignty of the people of this country, of their right to call Constitutional Conventions, from the origin of the government to the present time, has been denied by many eminent lawyers who have been called statesmen. The right of the people to call Constitutional Conventions, whenever and wherever they please, without the intervention of legislative bodies, has never yet been fully accepted by many of the eminent men of the legal profession of this country—men who borrow their ideas of our institutions from England, instead of fully comprehending the scope, genius, and spirit of our institutions. I believe it to be the duty of this Convention, to insert a provision in the Constitution for calling future Conventions, so that the people shall not depend upon the will of the legislature, and so that no future professors of Harvard University, no future judges of the supreme court, no future governors of Massachusetts, no future attorney-generals of Massachusetts, shall ever doubt the constitutionality of a Convention of the people of Massachusetts. In my judgment, we should incorporate a provision of that character into the Constitution, to give the people an opportunity of holding Conventions hereafter, without coming to the legislature and asking leave to hold such Conventions. I maintain, that the people of this State have a right to order a Constitutional Convention, whether the legislature give them that power or not. That is the American doctrine upon this subject. When the present provisions of the Constitution are so interpreted, and interpreted too by learned men, and whose opinions, in my judgment, lost us the Convention in 1851,—for these opinions of Professor Greenleaf, and Charles G. Loring, and other eminent legal gentlemen, were spread broadcast over the State, as election documents,—I say it is our duty to incorporate such a provision into the Constitution, that hereafter the question of the constitutionality of a Convention for revising the Constitution, shall never be raised upon the soil of Massachusetts by any lawyer or public man. A provision of that character, can be framed and adopted by this body. It does not seem to me, that it should be a lengthy proposition, and it may be brief and comprehensive. Such a provision is incorporated in the Constitutions of nearly every State of the Union. Gentlemen tell us it is only a restriction upon the rights of the people. Theoretically it may be so, but practically it is not so. Therefore, I wish to see a provision of that character incorporated into the Constitution, and if this Convention adjourns without doing that, I believe we shall be false to our obligations here; and you must expect, when the question is hereafter raised, that you will have professors at Cambridge consulted, and you will have a committee of the Senate and House of Representatives following the example of the minority committee of 1852, who declared that it was unconstitutional to have such a Convention. I have not the report of that minority committee before me, but they reported that the Act calling such Convention was unconstitutional. Such was the judgment of the great mass of the Whig party of this State, declared before the people in public assemblies, and declared through the columns of the press. The *Daily Advertiser*, and other leading journals of this city, advocated the repeal of that Act, as an unconstitutional Act, after the legislature came together, and after the governor had declared it to be of doubtful constitutionality. The gentleman from Cambridge, (Mr. Parker,) came into this Convention and declared that he believed the Act was constitutional, but he thought that the legislature had a right to repeal it, and turn us all out of doors. I do not believe in this doctrine. I desire to see placed in the Constitution a plain and clear provision upon this subject. I do not wish to see the legislature of this State amending the Constitution; and I trust that that great work will be left hereafter to the agents of the people, chosen for that express purpose.

On motion of Mr. BREED, of Lynn, the Committee rose, and the President having resumed the chair of

THE CONVENTION,

The Committee, by their chairman, reported progress, and obtained leave to sit again.

On motion by Mr. WILSON, of Natick, the propositions submitted by Messrs. Hallett and Giles, as substitutes for the resolves reported by the Committee on future amendments to the Constitution, were ordered to be printed.

The Convention then, on motion, at seven o'clock, adjourned until to-morrow morning, at nine o'clock.

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TUESDAY, July 19, 1853.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The Journal of yesterday was read.

*Delegate from Concord.*

Mr. HOBBS, of Weston, presented the credentials of Mr. CHARLES C. HAZEWELL, elected a delegate from Concord, in place of Mr. Gourgas, deceased, which were received, and the delegate took his seat.

*Report from a Committee.*

Mr. GRISWOLD, for Erving, from the Committee on the House of Representatives, reported that it was inexpedient to act upon the subject of an order of May 25th, concerning the expediency of providing that towns and districts may have the right to be represented by any citizens of the Commonwealth.

The Report was referred to the Committee of the Whole, and ordered to be printed.

*Compensation of Members.*

The order submitted yesterday by Mr. Wilson, of Natick, being the first item on the Orders of the Day, was taken up for consideration.

It was read, as follows :—

*Ordered*, That the Committee on the Pay Roll be instructed to make up the same, including the day of final adjournment, allowing to each member pay only for his actual attendance, except in cases of sickness.

The question being on the adoption of the order.

Mr. BRIGGS, of Pittsfield, said he would like to be informed how the mover of this order intended that it should apply in the case of those members who were absent a part of Saturday and a part of Monday. He would like to hear the gentleman explain what he means by a day's attendance. I do not, continued Mr. Briggs, intend to take up any time in talking about this matter, but it does seem to me that the proposition should not be adopted.

There is necessarily a very great inequality in regard to the attendance of members here. The record shows that about one-half of the members of this Convention live at their own homes, and that they go home each evening and have some opportunity to attend to their business, while those who live farther have not that privilege. Some who live at a distance go home every Saturday and return on Monday. If, then, such a rule as this be stringently applied, it will cut off a large part of the compensation of those who are so situated. It appears to me there should be a little more liberality in matters of this kind. I speak in behalf of those members who live away from their homes as well as myself, and whose only opportunity to go home is to take a part of Saturday for that purpose, and a part of Monday to return. So far as I am concerned, I shall have no hesitation in putting down in my charge for attendance, every day in the week, although I have been absent on Saturday and Monday. I should have no compunctions of conscience whatever on that score, the more especially if those gentlemen who go home every day, leaving this hall long before the adjournment in the evening, are entitled, under this order, to make a charge for such days' attendance. I merely wish to be informed in regard to this order what is to be its construction in this respect.

Mr. WILSON, of Natick. I can only say, Mr. President, that it appears to me that the Convention ought to adopt some such rule as this. I think that honesty and sound policy alike demand its adoption. What are the facts? The record will show that from the commencement of the session to the present time there have been at least a hundred members absent each day; one-fourth of the members of this Convention have been daily absent. That is about the average. Now, Sir, we have voted ourselves three dollars a day. This is a large increase over the pay of members of the legislature, and if we are to draw our pay while we are not here attending to our duties, twenty-five or thirty thousand dollars will be taken out of the public treasury, that have not been fairly earned. The gentleman from Pittsfield may think it unnecessary to adopt a resolution of this character, but I confess I view the matter differently. There has been a similar rule in the legislature, but what has been the action of gentlemen of the legislature, during the past year? I hold in my hand the record of the pay of the members of the last legislature, taken from the books of the treasury office, which shows that the last legislature must have taken out of the public treasury twenty or twenty-five thousand dollars that did not belong to them.

There were two hundred and eighty-seven members at least; and from the pay roll it would appear that there was an average attendance of two hundred and eighty-four and a half, although every one knows that there were eighty or ninety members absent every day. Our record shows that one-quarter and recently one-third of the members of this Convention have not attended here daily.

Now I am one of those who believe, that the sense of public justice should be stronger than the instinct of public plunder. I am in favor of having our pay while we are here, attending to our duties; and, while we are at home, attending to our own private business, let us pay ourselves. I have not, myself, been absent from the Convention for a single hour, from the time of its first meeting until the present time. I have not been at home, because I cannot go home, while the Convention is in session, without absenting myself from some one or more of its sittings. And I feel it to be my duty to remain here, so long as the public business remains to be done. I think there is only one fair and honest way of dealing, in making up the pay roll. It is that members shall receive pay while attending to their duties, and not while absent. What I wish, is, that the Committee on the Pay Roll should see to it, that a proper reduction is made for absences, and that money be not paid where no service is rendered.

Mr. SCHOULER, of Boston. I have nothing to say in regard to this order, but I do wish to correct an erroneous impression that may go abroad, in regard to the last legislature taking twenty-five or thirty thousand dollars out of the public treasury which did not belong to them, as would appear to be the case, according to the testimony of the gentleman from Natick. It appears he has been down to the office of the Auditor, and found out that thirty thousand dollars have been taken out of the State treasury by the members of the last legislature, without any authority.

Mr. WILSON. Will the gentleman allow me to explain?

Mr. SCHOULER. Yes, Sir. I think it requires explanation.

Mr. WILSON. I wish to say to the gentleman from Boston, that when he undertakes to repeat a statement made by me, he ought at least to state it correctly. What I said was this: that in my judgment there were, as appeared by the record, eighty or ninety members of the last legislature absent daily; and, that being so, from twenty to twenty-five thousand dollars must have been drawn from the treasury by members of that legislature, that had not been earned by them. That is what I said, and I am ready to stand by it.

Mr. SCHOULER. That is exactly what I said, or intended to say, that according to the gentleman's statement, twenty or twenty-five thousand dollars were taken out of the State treasury wrongfully. Now I do not know how it may be. I presume the figures of the gentleman are right, in regard to the attendance of members of the legislature. Every-body knows that they have a rule in the legislature—and there is a similar rule here—that every member shall keep an account of his own time, and make returns of his attendance to the Committee on the Pay Roll. And the custom has been, from time immemorial, I believe, for members to return quite as much time as the rule permitted, and this practice has not been confined to members of the last legislature. If the gentleman had only pursued the investigation, he would have found, that all legislatures, heretofore, have pursued the same course. Members think they are entitled to pay, whether here or not. I will state for myself, that I never did take a day's pay for a day on which I did not attend; but I am aware that members who have been absent attending to their own private business, and who have not been in attendance in the legislature more than half the time, have drawn more pay for the session than I have, although I had been present every day with the exception of two or three. I merely rose to correct an erroneous impression, that might naturally be entertained in view of the representation of the gentleman from Natick, in reference to the last legislature being culpable in this matter, more than former ones. I do not think there is any good grounds for making the distinction.

Mr. WILSON. I did not mean, Sir, to speak of the last legislature as being at all different from those which preceded it. But I have only examined in reference to that, and in my opinion the legislatures of the last six years, have pursued about the same course.

Mr. SCHOULER. That is what I want to get at. I do not wish that the last legislature should bear all the blame to which others are equally liable. I think each member ought to keep an account of his own time, and render a correct account to the Committee. Therefore, I see no necessity for this resolution.

Mr. HYDE, of Sturbridge. I think this resolution altogether unnecessary. Members will see that the twenty-seventh rule prescribes that every member shall keep an account of his own attendance and travel, and deliver the same to the Committee appointed to make up the Pay Roll, and

on his failure so to do, he shall be omitted from the pay roll; and no member shall receive pay for any weekday on which he has not actually attended, except in case of sickness. It seems to me, therefore, that this order is wholly unnecessary; and for the purpose of saving time, I move that it be laid upon the table.

Mr. LIVERMORE. I will ask the gentleman to withdraw his motion for a moment.

Mr. HYDE. To accommodate my friend from Cambridge, I will withdraw it.

Mr. LIVERMORE. I came in just as my friend from Natick was administering either some advice, or a rebuke, to the Committee on the Pay Roll. I do not know why. I heard only the conclusion of his remarks, wherein he said he hoped the Committee would see to it that no member was paid for any day that he is not in attendance. Now, I do not know how the Committee on the Pay Roll is to know when every member is here, and when not here. Are they to go round and find out who are absent, and keep a record of the absentees? The Committee on the Pay Roll have agreed to send to each member a certificate to be signed by him, stating the time of his attendance and travel, in accordance with the rule that has just been read. Now, I do not know what more the Committee can do; they are not the keepers of the consciences of members of the Convention; and if gentlemen see proper to send in a false certificate, it is a matter which rests wholly with themselves, though I trust no such imputation will be made. I will add, that the Committee have decided not to insert any name upon the pay roll, unless accompanied by a certificate, signed by the member. I believe this has always been the custom.

Mr. RANTOUL, of Beverly. The gentleman from Boston has stated that the custom has been, from time immemorial, that members of the legislature charge for attendance when they are not actually in attendance. I must take the liberty of differing from the gentleman, and saying that within the memory of man, the custom has been different. I have had some experience in the legislature, upwards of twenty years ago, and I recollect very well that the custom then was, to make a deduction from the pay of a member when absent, attending to his own private business. The practice which the gentleman alludes to, as having prevailed from time immemorial, must certainly have grown up within the last twenty years.

Mr. WHEELER, of Lincoln. I will move to amend the proposition of the gentleman from Natick, so as to make it read, that members shall certify their attendance, agreeably to the twenty-seventh rule, under oath. I will remark, that I made a similar proposition in the last legislature, and I think it is one that it is very proper to adopt. Members ought not to be paid for attendance when not here attending to the public business.

Mr. BUTLER, of Lowell. I wish simply to say, Sir, that the gentleman from Lincoln states the fact correctly, that he offered this proposition in the last legislature; and, Sir, I will add what he omitted to inform us of, that we voted it down almost unanimously. [A laugh.]

Mr. EDWARDS, of Southampton. I should like to move to amend, so that every member shall be obliged to state how many hours he has been here on successive days. If the gentleman will adopt that modification, and make ten hours constitute a day's work, I shall be willing to go for it. I have attended, each day, until the close of the proceedings, but I have noticed that there are gentlemen who, after five o'clock, each day, absent themselves. We cannot equalize the matter. Some gentlemen have attended one hour, and others have attended closely to business until the close of the sessions each day.

Mr. WILSON. I wish to say, in regard to the amendment proposed by the gentleman from Lincoln, that I can see no necessity for its adoption; on the contrary, I do not see how it can be adopted, and carried out. I take it, that the gentlemen who have not attended the sittings of the Convention every day, will find it very difficult to make up a statement of their attendance, under oath. They ought not to be required to do anything of the kind. All that can be expected of members of this Convention, who have not been able to be here daily, is this: that in making up their account, they should endeavor to deal fairly and honestly with the Commonwealth, and to deduct those days on which they think, or have reason to know, that they have been unable to attend here. Now, the gentleman says we have a rule of that character; so we have, and have had during the last six or eight years, but we have not acted up to it. It has not been at all operative. I do not know that it will be of any avail if we pass this, but we had better adopt it, nevertheless, and act up to it, if we can. As to the rule in the legislature, it is a mere matter of form. No attention is paid to it. In 1841 and 1842, it was the practice to deduct the time when absent. Nearly all the members did it; but, during the last seven or eight years, it has grown into a practice to allow for attendance when members are not here. Now, Sir, I hope that the Convention will set the example of dealing fairly and honestly with the Common-

wealth in this matter, and that, after voting three dollars a day, to each member, we shall not take out of the public treasury any more funds than are required to remunerate members for actual attendance. Here is a simple proposition, ordering the Committee to make up the pay roll according to the rule we have adopted, and I see no reason why it should be opposed. If it should be opposed, and voted down, it will surely be taken as an indication that we mean to pay ourselves for all the time, whether we have been absent, or whether we have been in attendance.

Mr. LIVERMORE, of Cambridge, asked for the reading of the order.

It was accordingly read, by the Secretary.

Mr. LIVERMORE. It appears to me, Sir, that there is an incongruity in the phraseology of that order, for, as I understand it, it directs the Committee on the Pay Roll to make up the Committee on the Pay Roll. It strikes me, that that Committee has been made up for some time, and are ready to act.

Mr. BRIGGS. I do not see the necessity for any such order as this. At the beginning of this session, this Convention prescribed a rule by which members have been drawing their pay for attendance, and it seems to me, that it is only necessary that the order should instruct the Committee to make up the pay roll; they will understand how to do it. I should like to have the sense of the Convention as to what we are to do in this matter. I stated, when up before, that if I occasionally went home on Saturday night, and returned on Monday, I should feel authorized and perfectly justified in putting those two days into my account for attendance, and if it is not right to do so, I should like to be so informed. If those members of the Convention, from the country, who come here and sit from nine o'clock in the morning until the hour of adjournment, day after day, making a quorum, when other gentlemen see fit to absent themselves, receiving pay for full attendance, I want to know if, when others run home on Saturday night and return on Monday morning, they are to have their allowance for attendance on those two days stricken out, while other gentlemen go home every night, leaving the Convention long before the hour of adjournment, and are absent from the session of the body three times as long as those who go home on Saturday, and return on Monday? I say, I should like the instruction of the Convention in regard to this question.

As to the matter of swearing, I have not sworn as yet, and I hope I shall not be compelled, at this late period of the session, to swear as our army did in Flanders. I desire, in good faith, to know how I am to act in this matter.

Mr. WILSON. I supposed it would be a very plain case, and one to be easily comprehended, that every gentleman, under this rule, will be allowed to make up his accounts according to his own judgment, and what he thinks is fair, honest and proper; and that there would be no trouble in the matter. I see no necessity for any objection being made to the passage of the order by my friend, on that account.

Mr. BRIGGS. Well, as an experienced man in this matter, I should like to have my friend from Natick say, whether he thinks I would be doing right or wrong in claiming for attendance on those days. I ask him in good faith, as I know nothing about it from my own experience.

Mr. WILSON, of Natick. Mr. President: In reply to the inquiries made by the gentleman from Pittsfield, (Gov. Briggs,) I have to say, that the order is plain and simple in its language; that the gentleman from Pittsfield, and every other member of the Convention, can readily comprehend it. The member from Pittsfield, and other members, in making up the number of days' attendance, must be guided by their own sense of public duty.

It is true, Mr. President, that the rule explicitly declares, that "*No member shall receive pay for any weekday on which he has not actually attended*, except in case of sickness." But, Sir, what does the rule amount to? It is practically a dead letter. It has been the rule of the House of Representatives for years, and it has been generally evaded—disregarded altogether. A few members have acted up to its requirements; but the members generally pay no regard to it, none whatever. Sir, I venture to say, that with that rule before them, the members of the last five legislatures, have taken more than $100,000 out of the treasury—never earned. Here to-day, on the floor of this Convention, I make this declaration, and no man here or elsewhere, can or will deny it.

Sir, I have been to the treasury department, and I have procured a statement of the pay roll of the last House of Representatives. That House consisted of two hundred and eighty-seven members; two hundred and forty-three of those members drew pay for every day's attendance; leaving only forty-four members who made any deduction for absent days. The average attendance during the session—by the standard of the pay roll—was two hundred and eighty-four and one-half daily, making only two and one-half absences daily. Now, Sir, every man knows, who has any knowledge of the last House of Representatives, that the daily absences amounted, in that body

of two hundred and eighty-seven members, to at least, eighty-seven members. I venture to say, that the daily average attendance of the House did not exceed two hundred members. Yet, if we are to take the pay roll as the evidence of attendance, the actual daily attendance averaged two hundred eigty-four and one-half. Is this right? Is it an evidence of public integrity? Not less than $20,000 were taken out of the public treasury by the members of the last legislature, which were never earned; money taken out of the public treasury, in violation of the rules of the House; rules made by the members for their own government.

Mr. President: I wish to be distinctly understood. I do not mean to say, that the members of the last House of Representatives were more remiss in their attendance than were the members of the legislatures of the two preceding years. Neither do I wish to give the impression that they took more money from the public treasury—which they had never earned—than did the members of preceding legislatures. I have not taken time to examine the pay rolls of those legislatures. I take the last legislature as an example of the loose way the accounts of members are now made up. It is time to put a stop to this mode of settling accounts—to this manner of squandering the public money. It is bad enough for members to neglect the duties assigned them here, to attend to their own private affairs, without at the same time drawing pay for services rendered—not to the public—but to themselves.

This Convention, Mr. President, owes it to its own reputation, to honesty, to a sense of public duty, to enforce its own rule, which declares that "*No member shall receive pay for any weekday on which he has not actually attended, except for sickness.*" This Convention, called here to revise the organic law of this old Puritan Commonwealth, should set to future legislatures, who are to assemble under the revised Constitution, an example of inflexible integrity. The members of this Convention should deduct the days they have been absent, unless those days were days of sickness.

Sir, the adoption of this order will be deemed, and taken, by the members, to be a declaration that the members are required to obey the rule, which requires them to deduct from their account the days they have not attended. If this order is not adopted, the members will take it to be the sense of the Convention, that the rule is to be considered in the Convention as it has been considered in the legislature, a dead letter. I have performed my duty, as a member of the Convention, by proposing this order, which if adopted and obeyed, will secure to the treasury, at least, $25,000. There are four hundred and nineteen members of the Convention. The average daily attendence has not, I venture to say,—and I have some right to speak, for I have not been absent half an hour during the session,—exceeded three hundred, making about one hundred and twenty absences, daily. There should be deducted, at least, $25,000 from the pay roll of the Convention, for non-attendance.

Mr. President: We have voted to pay ourselves three dollars per day. I gave my vote for that resolve with a great deal of hesitation and reluctance. Gentlemen were called here during the busiest portion of the year; called from their farms and business avocations; called here at a pecuniary sacrifice. Compelled to work here from six to nine hours, daily, in mid-summer, I felt that those gentlemen who were here, away from their homes, ought to have that sum, and I voted for it against my own personal wishes and feelings. Having voted for the liberal sum of three dollars per day, I hope we shall all of us join in an effort to require the pay roll to be made up so that members will not draw from the treasury three dollars per day to which they have no claim—which they are forbidden to touch by their own rule, if enforced, as I hope it will be.

Mr. LORD, of Salem. I desire to inquire as a question of order, whether this resolution can be entertained without a suspension of the rules. The twenty-seventh rule provides that members shall have pay for Sundays; this order excludes that and consequently is a violation of that standing rule. I desire to know if such an order can be entertained while the rule I have mentioned is in force.

The PRESIDENT. The question suggested by the gentleman from Salem is a question of consistency. The gentleman may object to this order as being inconsistent with the existing rule, which fact, it will be for the Convention to determine, and not for the Chair to decide. It is a matter wholly within the province of the Convention.

Mr. LORD. I had supposed that if it is proposed to do something that is contrary to what our rules require, it would be the duty of the President to decide how far it is permissible. The rule requires members to certify their attendance, including Sundays; this order requires that that day shall be excepted. I do not believe it is of any consequence, however, and I move to lay the whole subject upon the table.

The question was taken on agreeing to the motion, and it was, upon a division—ayes, 137; noes, 44—decided in the affirmative.

*Limitation of Debate.*

The following order, submitted yesterday by the gentleman from Medway, (Mr. Brown,) was taken up for consideration :—

*Ordered*, That no member, except the chairmen of committees, shall speak upon any subject more than fifteen minutes, without leave.

Mr. KINSMAN, of Newburyport. I see no propriety, Mr. President, in passing such an order as this, and I can conceive of no reason why a distinction should be made between the chairmen of committees and others. As every one knows, there is a minority in this Convention, who have to content themselves merely with the right to speak and protest; and though it is a poor privilege, especially on a subject of importance, it is one they ought to enjoy, and which ought to be secured to them.

Now, what does this order do. It deprives them of the right of speaking more than fifteen minutes, and gives the prevailing party, in addition to the power they have already to control the whole action of the Convention by their votes, the right to occupy a whole hour in speaking, because the chairmen of the committees, according to parliamentary usage, are always of the predominant party. I do not make these remarks because I desire to speak, but it seems to me that the effect of the order will be to abridge the right which belongs to the minority to be heard, and to debate all subjects fully, and that therefore it ought not to pass.

Mr. ASPINWALL, of Brookline, moved to strike out the words "except the chairmen of committees."

Mr. STEVENSON, of Boston. I hope the amendment will prevail, if the Convention have any intention of passing such an order as this; but I am free to say that we shall hardly be able to determine, at present, how many matters there are on the Orders of the Day which will be affected by the adoption of an order like this, which puts it out of the power of those who are opposed to the propositions to discuss them fully. If there be, as I suppose, important questions to come before the Convention for consideration, before we can adjourn, it seems to me that it is highly improper that we should adopt a rule which will prevent them from being discussed, merely because they necessarily come up late in the session. The proposition is made, it is said, in accordance with the practice that prevails in the legislature. Now there is a clear and palpable distinction upon which the propriety of such a rule in the legislature may rest, but which can form no foundation for it here. In the legislature, where high party contests sometimes prevail, if an impression arises in the mind of the majority that the minority are endeavoring to create delay, the majority may be provoked to pass such a rule for their protection; and it would be justifiable, perhaps, because if it be a private matter, you can say to the individual interested, you should have come earlier; or if it be public matter, they may say we shall be here six months hence, and no great evil can result from the delay. But in an assembly constituted as this is, to recommend to the people changes in the Constitution, neither of these reasons can operate.

Then, in regard to giving an hour to chairmen of committees, and limiting other members to a less time, it appears to me that if such a rule is to be made, it ought to be made in another direction. The chairman of a committee has the advantage of the *prestige* of the report. He has the advantage of the views he has presented to the Committee, and the concurrence of the Committee, whereas those who come in opposition, stand upon a new ground, and their reasons are surely entitled to be heard. The rule ought, therefore, to be the other way; but I object to the adoption of any rule that shall prevent any question being debated; and let me say to this Convention, through you, that such a rule does not save one moment of time. The true way to insure a short debate on any subject, in Committee of the Whole, is to allow those who have examined the subject to discuss it thoroughly, otherwise each suggestion calls up members in every part of the House; and every suggestion which carries with it indications of justice and propriety costs absolutely more time in an assembly composed of over four hundred delegates than would be the case in the absence of such a rule. I hope the order will be rejected; but if it is to be adopted, I trust that the amendment proposed by the gentleman from Brookline will first be made.

Mr. ALLEN, of Worcester. I hope the amendment will not be adopted, for I like the exception better than the rule. If the Committee make a report recommending an amendment to the Constitution, it is necessary to make such explanation of the report as cannot be done in fifteen minutes; and I believe it is according to the practice of parliamentary bodies elsewhere to allow the chairman of the Committee an opportunity to explain the report; but I doubt the expediency of adopting the rule at all. I think the limitation to one hour, with a right on the part of the chairman to close the debate, is stringent enough. I therefore move that the order be laid upon the table.

The motion was agreed to, and the order was accordingly laid upon the table.

*Sectarian Schools.*

Mr. BRIGGS, of Pittsfield, moved to take from the table the Report of the Committee in relation to Sectarian Schools, with the view to its being placed upon the Orders of the Day.

The question being taken on agreeing to the motion, it was—by ayes, 73; noes, 85—decided in the negative.

*Orders of the Day.*

On motion of Mr. ADAMS, of Lowell, the Convention proceeded to the consideration of the Orders of the Day. The first matter on the Orders of the Day was the resolves on subject of

*Elections by Plurality,*

On their second reading, the question being on their final passage; pending this question the gentleman from Boston, (Mr. Schouler,) had moved to amend the first resolution, by striking out all after the word "Resolved," and inserting the following:—

That it is expedient to provide in the Constitution that in the election of governor, lieutenant-governor, secretary, treasurer, auditor, attorney-general and councillors, the person having the largest number of votes shall be deemed to be elected.

Mr. UPTON, of Boston. Is an amendment still in order.

The PRESIDENT. It is in order.

Mr. UPTON. Then I move to strike out all after the word "the" in the sixth line, and insert the following: "individual having the highest number of votes shall be declared to be elected."

Mr. President: In offering the amendment, I had supposed that this Convention would agree to the principle laid down in the first part of this resolution, namely: "that is is expedient." I hope gentlemen of the Convention will mark and note the phraseology—"that it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary" to elect certain officers. I agree to that *expediency*. It is well to provide in the Constitution that it is expedient that these individual officers shall be elected by a *majority* of the votes cast. But, Sir, it is also expedient to provide something beyond that, if the people do not see fit to elect these officers by a majority of votes, and to do the next best thing. Therefore, I propose to strike out the latter part of this resolution, and put in the next best thing, and that is: that the individual candidate having the highest number of votes shall be declared elected. It seems to me it is hardly worth while to go into an argument. It is not enough to declare the *expediency* of the principle, that the individual having the majority of votes shall be elected. But we must go beyond that, as these individuals voted for do not have a majority of the votes cast, perhaps; and therefore instead of leaving the question to the minority of the people, which most assuredly will be the case, when it comes to the legislature, I propose, in the amendment which I have offered, that the person having the highest number of votes shall be declared elected. I do not propose to go into a discussion of the question of the majority and the plurality; but simply to state the grounds of the amendment, and to express the hope that it may meet the approbation of the members of this Convention.

Mr. DURGIN, of Wilmington. When this subject was up before, I had the audacity to offer a few remarks, and I have some of the same sort left. I wish, on this occasion, to express freely my feelings and my views upon this subject. I have seen no good reason for changing them from that time to the present. In every age of the world, Sir, when republics and independent governments have arisen, great men have been there, and great men acted; and these republics came up, in despite and in defiance of monarchy of every kind. While those great men, those guardian spirits, those master spirits of the storm were there, those republics were safe. The same was true of our government. When this republic sprang up, there were great men and true there, men that feared God and regarded the interests of men—not like the unjust judge that feared not God nor regarded man—but men willing to sacrifice life, sacred honor, and fortune. Perhaps these great men have fallen.

Then, what has been the tendency of the ancient republics? There was, and there is, a tendency in republics towards monarchy. If you look for the ancient republics, where are they? They are not. They live only in history—only in song. And, if you look to modern republics even, look to Mexico, look to the South American republics, and what is the tendency to-day? Are they breathing, are they panting, are they striving, as the heart of one man, for liberty, or is there a tendency to monarchy? Look at France, with all her boasted liberty and her republicanism; that peaceful and bloodless conquest; that bloodless transit from monarchy to republicanism, and where is France now? Is it a republic? I say there is a tendency in republics to monarchy. How did it happen, and how does it hap-

pen? Is it because the people come out *en masse*, and assert their rights, and assert their liberties, and take the responsibility of the government upon their own shoulders—take the government into their own hands? No, Sir; but this tendency arises from the fact, that the people relinquish and yield, daily and unresistingly, that which, in duty, they are bound before God, to come out and to support. They yield it into the hands of a few, and that few hand it down to a still less number, and that less number may perhaps make the one man power in the nation. Thus the tendency is going on, and every man that has half an eye, that has half a thought, can comprehend this fact.

But, Sir, let me say, that there is no absolute and fatal necessity for this state of affairs. The first cause of this tendency, is the removal of the government from the people. While the people hold the government in their hands, and while they exercise its functions, this thing never can take place; but, when the government is removed from them, or when they surrender it, then this is the legitimate tendency. The cutting off of the participation of the people in the government, is the first, and one of the fundamental causes why this state of things ever exists in the world.

The second cause, is the want of knowledge on the part of the people, of the principles of a free government. You give to every individual citizen a knowledge of the great principles of a free government, and there is no danger of a republic's waning, or becoming a monarchy. How shall you give to the people a knowledge of the great principles of a free government? Throw the government upon their shoulders; throw it into their heads and hearts, and make the people responsible; make them understand their rights; school them; educate them in these principles. And how shall they be educated? By withdrawing the great principles of free government from them? No, Sir; but by holding them up before their understanding, and making the people feel that government is for the people.

Again. The more widely the government is diffused among the people, the farther it is from monarchy. Let the people of any nation, the whole mass of the people be responsible, and be actors in the great principles of a free government, and a monarch will die; he cannot breathe; there is no air which is congenial to his existence. There is no food on which a monarch can be sustained, none that shall give subsistence and vitality, and he fails and dies. He moves not; he thinks not; he feels not; he is not there.

Again, let me say, the fewer the people who participate in the government, the nearer that government approaches to a monarchy or an aristocracy. I want this principle clearly understood, that the fewer the people, the less the number of those who participate in the government, and have a voice in its concerns, the nearer that government approaches to a minority, and by so much it approaches to an aristocracy, both of which are opposed to the great principles of true republicanism, and true democracy.

Plurality, Sir, is something less than the people. Yes, I avow it. A mere plurality is not the people in any correct republican sense of the term, as used in a government like ours. I say, that a plurality is something less than the people; it is not the voice of the people, it is but a voice of a minority of the people. What are its tendencies? You may undertake to convince me that seven is not less than ten. Who will believe it? Who can admit it as a fact? No one, unless he is deprived of his senses. The legitimate, and the only tendency of a plurality system, no matter where it is adopted, or where it acts, whether in Massachusetts, or Rhode Island, or in every State in this federal republic, whether in America, or in Europe, is to contract and narrow down the powers of men, instead of extending them abroad and diffusing life and vitality; and the tendency is constantly towards monarchy; towards the one man power, in spite of the very fates. Sir, look at it. If you have a plurality to-day, you have a less number to-morrow, and a less number next year, and so on. Some good mathematician, some individual skilled in algebra, or well skilled in progression, perhaps, may tell if you give him the data, how long it would be, before the one man power would exist. Every man knows that this is the legitimate tendency, if there is any tendency at all.

Again. I say every man should be made to feel, as far as possible, his responsibility in relation to the government in such a country as ours. I am opposed, therefore, to anything that will lessen a man's responsibility in this government. I was very much pleased with an order introduced by the reverend gentleman from Boston, (Mr. Lothrop,) sometime since, making it penal to neglect the discharge of duties towards the government, and not to go out and vote and take a share of the responsibility in this great government. Why, Sir, I would no more neglect the government than I would neglect my God. It is the duty of every man in this republic to go up to the polls and there show, by his voice and his vote, that he feels his responsibility, and teach it to his sons, and his sons' sons, and teach it to the rising generation that they are to take the responsibility of

this great government upon themselves. The individual who looks at the specific and legitimate tendencies of curtailing and checking this responsibility upon the rising generation, though he may not feel it in his heart, is virtually an enemy to his country, an enemy to his God. These are my convictions, and these are my views. The plurality system, Sir, is a departure, it is a daring, fearful departure from those high, world-wide principles which distinguish Americanism from monarchy. Is there no specific difference, is there no difference in the practical workings of Americanism, so-called republicanism, as enjoyed by this great federal republic, and the government of a monarchy, or a monarchical form of government?

Now, Sir, I say that the plurality system is a daring, and I had almost said, a Heaven-daring departure from those principles. Tell it to some of those patriots of 1776, who have long slumbered in their graves, and I should not think it strange at all that they moved from their resting places.

What do the principles of monarchy do, Sir? When these principles are carried out, their legitimate tendency is to extort groans, and tears, and sighs. They not only clothe a people in rags in too many cases, but they spread hunger and death through the realm. Look at England, proud as she is, and see what has been the result of her system of government, with all the professions of liberty which they make—see what results have been produced there for the last quarter of a century in this respect. Why, Sir, there is Ireland, which contributes largely to the funds of that nation; and it presents the most frightful picture of distress, poverty and wretchedness—all owing to the working of that government, which is world-wide from that of a republic.

Let me say again, that the tendency of the plurality system, if carried out, will be to lull the mass of the people to sleep; for it does, and it will of necessity, deprive the great mass of the people from acting, or from seeing any results of their action. A man will stay at home because he cannot act conscientiously. We have had a question up here this morning about the pay roll, and the gentleman from Pittsfield avowed his wish to act conscientiously in relation to this matter; and that is the way it will be with a great many people throughout the Commonwealth. Men will not go and vote, if they cannot vote upon principle. They will say: "If you tie up my hands and my feet, how can I act? If you adopt the plurality system, what can I do? If I act at all, I want to act conscientiously." So you see, Mr. President, that the result of the plurality system will be to keep a great many men from the polls. A man will say to himself and to his boys: "Let us stay at home, for if we were to go and vote, we should vote so and so; and we know that we cannot have the privilege of expressing our opinions, or if they are expressed, it will do no good at all. Let us stay at home, and let the government go to rack and ruin." Men will feel thus, and they will talk thus. Every man can see, if he will reflect on it, that this will be the result of that system.

It is said that the plurality system will be more convenient. That seems to be the great bugbear that is brought up here against the majority system; but what have we got to do with convenience, in a government like this? It might have been more convenient for our fathers in 1776 to have remained at home quietly, and let the iron heel of tyranny and oppression tread out the last spark of life and liberty from these colonies—that might have been more convenient; but, Sir, they were not men who heeded the labor, and toil, and peril, of the cause in which they were engaged. They loooked beyond all these considerations to the principle of right and justice, and upon these they acted; and Sir, they acted nobly, wisely, and victoriously. A government like ours, if it does not cost anything, would scarcely be worth anything; can we expect that such a government as ours will be brought to us if we lie supinely upon our backs and make no effort? If it be a mere matter of convenience, I would rather take the noble principle of one anciently, when he said: "I will not sacrifice to God that which costs me nothing." It seems to be a mere matter of dollars and cents—a mere saving of a little time. I ask the members of this Convention, through you, Mr. President, must we sacrifice principles which are as high as eternal truth, at the shrine of sordid convenience? This is nothing more nor less than sordid convenience; it is a mere saving of dollars and cents; and I hope and pray that we shall do no such thing. Why shall we not have the plurality system in all things, if it is a good principle? I was pleased to hear the remarks of the gentleman from Boston, (Mr. Stevenson). When he made his remarks I said "Amen!" in spite of myself—it drew it right out of me—for he is a gentleman who speaks so eloquently, and more than that, he speaks only when he has something to say. Why not have the plurality in everything? Why not carry it into your juries? If they cannot decide, let the majority rule; or why not let even a plurality rule, if a case could arise, where there could be a plurality, why not let them decide the question? Would it be a departure from principle, and a sacrifice of

principle? I tell you it would. Sir, no little fraction, no clique, no little squad of men ought to rule in the town, in the parish, in the county, in the state, or in the nation, and woe to this Union when the people allow such a state of affairs.

Sir, the adoption of this plurality system is not a tacit acknowledgment, but it is an open, unblushing avowal, that men are not capable of governing themselves.

Sir, that is just what Old England, just what Russia, just what Austria, just what every tyrannical government under heaven declares—they all agree in the opinion that men cannot govern themselves. Now, this is not a tacit acknowledgment of this doctrine, but it is a candid, open, unblushing avowal, that a majority of the people cannot govern themselves; and therefore you must place the government in the hands of somebody else. Now, Mr. President, I am not in favor of making this avowal to-day, or at any time. Far from it, Sir. As I have said before, this is the acknowledgment; for a plurality is not the people, but it is something less than the people. If you adopt this system, therefore, you declare, by a vote of this body, the conviction that the people cannot govern themselves. But, says one, other States have adopted it. So much the worse, say I. Suppose every State in this whole republic should adopt the plurality system, I say that only makes the matter so much the worse; it is only making the acknowledgment so much the more universal, that men cannot govern themselves, and it is consequently so much the more to be lamented and deplored. There is only one thing under Heaven that would induce me to go for the plurality system, and that is this: If we were likely to fail and not have any government at all, I would go for the plurality system, or almost anything else, in order to prevent such a result, upon the principle that almost any government is better than no government at all. But that is the only inducement that would operate upon me to make me favor that system.

[The hammer fell, the time allowed having expired.]

The question being taken on the amendment of Mr. Upton, it was not agreed to.

The question then recurred on the amendment of Mr. SCHOULER, and the question being taken by yeas and nays, the result was—yeas, 159; nays, 159—as follows:—

YEAS.

| | |
|---|---|
| Adams, Benjamin P. | Aspinwall, William |
| Aldrich, P. Emory | Atwood, David C. |
| Andrews, Robert | Austin, George |
| Ayres, Samuel | Hobart, Aaron |
| Barrows, Joseph | Hobbs, Edwin |
| Bell, Luther V. | Hooper, Foster |
| Bishop, Henry W. | Hopkinson, Thomas |
| Blagden, George W. | Hubbard, William J. |
| Boutwell, George S. | Hunt, William |
| Bradbury, Ebenezer | Huntington, Asahel |
| Braman, Milton P. | Huntington, Charles P. |
| Breed, Hiram N. | Hurlburt, Samuel A. |
| Brewster, Osmyn | Hyde, Benjamin D. |
| Brinley, Francis | Jackson, Samuel |
| Briggs, George N. | Jacobs, John |
| Brown, Adolphus F. | James, William |
| Bullock, Rufus | Jenkins, John |
| Bumpus Cephas C. | Jenks, Samuel H. |
| Burlingame, Anson | Kellogg, Giles C. |
| Carter, Timothy W. | Kingman, Joseph |
| Chandler, Amariah | Kinsman, Henry W. |
| Chapin, Chester W. | Knight, Hiram |
| Childs, Josiah | Knight, Jefferson |
| Clark, Henry | Knight, Joseph |
| Clarke, Alpheus B. | Knowlton, Charles L. |
| Clarke, Stillman | Kuhn, George H. |
| Coggin, Jacob | Ladd, John S. |
| Cogswell, Nathaniel | Leland, Alden |
| Cole, Sumner | Littlefield, Tristram |
| Conkey, Ithamar | Livermore, Isaac |
| Cook, Charles E. | Lord, Otis P. |
| Cooledge, Henry F. | Lothrop, Samuel K. |
| Crittenden, Simeon | Loud, Samuel P. |
| Crockett, George W. | Meader, Reuben |
| Crosby, Leander | Miller, Seth, Jr. |
| Crowell, Seth | Mixter, Samuel |
| Cushman, Henry W. | Morey, George |
| Dana, Richard H., Jr. | Morss, Joseph B. |
| Davis, Solomon | Morton, Marcus |
| Dawes, Henry L. | Nayson, Jonathan |
| Dean, Silas | Noyes, Daniel |
| Doane, James C. | Oliver, Henry K. |
| Easton, James, 2d | Orcutt, Nathan |
| Eaton, Lilley | Osgood, Charles |
| Edwards, Elisha | Park, John G. |
| Edwards, Samuel | Parker, Adolphus G. |
| Ely, Homer | Perkins, Jonathan C. |
| Farwell, A. G. | Pomroy, Jeremiah |
| Foster, Aaron | Putnam, George |
| French, Charles H. | Putnam, John A. |
| Frothingham, R., Jr. | Rantoul, Robert |
| Gilbert, Wanton C. | Read, James |
| Gould, Robert | Sargent, John M. |
| Goulding, Dalton | Schouler, William |
| Gray, John C. | Sikes, Chester |
| Green, Jabez | Sleeper, John S. |
| Griswold, Josiah W. | Souther, John |
| Griswold, Whiting | Stetson, Caleb |
| Hale, Artemas | Stevens, Charles G. |
| Hall, Charles B. | Stevens, Granville |
| Hammond, A. B. | Stevens, Joseph L., Jr. |
| Haskell, George | Stevenson, J. Thomas |
| Hawkes, Stephen E. | Storrow, Charles S. |
| Hayward, George | Strong, Alfred L. |
| Heard, Charles | Sumner, Increase |
| Henry, Samuel | Talbot, Thomas |
| Hersey, Henry | Taylor, Ralph |
| Hewes, James | Train, Charles R. |
| Heywood, Levi | Turner, David |
| Hillard, George S. | Turner, David P. |
| Hinsdale, William | Upham, Charles W. |

Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Warner, Samuel, Jr.
Weeks, Cyrus
Wheeler, William F.
White, Benjamin
Wilbur, Daniel
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, J. B.
Wilson, Milo
Winn, Jonathan B.
Wood, Nathaniel

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alvord, D. W.
Baker, Hillel
Banks, Nath'l P., Jr.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Sewell
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Butler, Benjamin F.
Carruthers, William
Case, Isaac
Chapin, Daniel E.
Chapin, Henry
Churchill, J. McKean
Clark, Ransom
Cleverly, William
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Freeman, James M.
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Greene, William B.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, William H.
Hobart, Henry
Hood, George
Howard, Martin
Hoyt, Henry K.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lincoln, Abishai
Little, Otis
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Moore, James M.
Morton, Elbridge G.
Morton, William S.
Newman, Charles
Nichols, William
Norton, Alfred
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pool, James M.
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Rogers, John
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, William
Stiles, Gideon
Taft, Arnold
Thayer, Willard, 2d
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Tyler, William
Underwood, Orison
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Waters, Asa H.
Weston, Gershom, B.
Whitney, Daniel S.
Whitney, James S.
Wilbur, Joseph
Williams, Henry
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Alley, John B.
Allis, Josiah
Appleton, William
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Bartlett, Sidney
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bennett, William, Jr.
Bigelow, Jacob
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A
Brown, Hiram C.
Brownell, Frederick
Bullen, Amos H.
Cady, Henry
Choate, Rufus
Clark, Salah
Cole, Lansing J.
Copeland, Benjamin F.
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Davis, Charles G.
Davis, John
Davis, Robert T.
Dehon, William
Denison, Hiram S.
Dorman, Moses
Ely, Joseph M.
Eustis, William T.
Fisk, Lyman
French, Charles A.
Gardner, Henry J.
Gardner, Johnson
Goulding, Jason
Greenleaf, Simon
Hadley, Samuel P.
Hale, Nathan
Harmon, Phineas
Holder, Nathaniel
Houghton, Samuel
Howland, Abraham H.
Hunt, Charles E.
Huntington, George H.
Kellogg, Martin R.
Langdon, Wilber C.
Lawton, Job G., Jr.
Lincoln, F. W., Jr.
Loomis, E. Justin
Lowell, John A.
Marvin, Theophilus R.
Monroe, James L.
Morton, Marcus, Jr.
Nash, Hiram
Nute, Andrew T.
Ober, Joseph E.
Paige, James W.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Perkins, Daniel A.
Pierce, Henry
Plunkett, William C.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Reed, Sampson
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Rockwood, Joseph
Royce, James C.
Sampson, George R.
Sherman, Charles
Simmons, Perez
Stacy, Eben H.

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| Stutson, William | Tyler, John S. |
| Sumner, Charles | Vinton, George A. |
| Swain, Alanson | Wallace, Frederick T. |
| Taber, Isaac C. | Wetmore, Thomas |
| Thayer, Joseph | White, George |
| Thomas, John W. | Wood, William H. |
| Tileston, Edmund P. | Woods, Josiah B. |
| Tower, Ephraim | |

Absent and not voting, 99.

The PRESIDENT. One hundred and fifty-nine gentlemen have voted in the affirmative, and one hundred and fifty-nine gentlemen in the negative. In the belief that it is inexpedient to submit to the people so radical a change in the Constitution upon a casting vote, the Chair votes in the negative, and the amendment is rejected.

Mr. HATHAWAY, of Freetown, moved to amend the third resolution, so that it would read as follows:—

*Resolved*, That representatives to the general court shall be elected as by law shall be provided.

Mr. HATHAWAY. It is with diffidence that I propose this amendment. I know the fate that befell the amendment which I proposed yesterday, when this Convention was in another situation, that of the Committee of the Whole. I suppose that I have a little, if not a full share, of the same feeling that it is said pervades most families: that the more sickly and rickety the bantling, the more the parent becomes attached to it, because of its weakness; while the healthy and strong one is left to care for itself. Sir, I recollect that this proposition, when offered to the Convention in another situation, fell almost lifeless. There is another reason, that oppresses me, upon this matter. I know very well the situation in which I stand here, in relation to certain gentlemen, and this Convention; but before proceeding to that, let me say to the gentleman from Salem, (Mr. Lord,) that what he yesterday said is not precisely true, as to myself. He yesterday said, if I understood him correctly, that no man *dared* give the reasons why this Report was made, and resolutions offered in their present form. Sir, let me say to him, that I "dare do all that becomes a man, and he who dares do more, is none." But, Sir, there are certain reasons, I doubt not, for this Report, which the Committee itself do not like to give, and would not be judged to be exactly appropriate and parliamentary; and therefore it would be improper for me *here* to say, that such reasons controlled their action, and hence I shall not undertake to give them; but in giving reasons that are proper and appropriate, and from which no one would start back, I will assure the gentleman from Salem that he will find me by no means backward in giving, in defence of any measure I may propose; but I am not answerable for this Report and resolutions, and shall leave it to the Committee who reported them, to give their reasons therefor. I cannot refuse the temptation of saying, that I feel that a debt of gratitude is due from me to my constituents, for the generous confidence they have bestowed upon me,—aye, Sir, something more,—a debt, not only of gratitude, but of duty. I feel as though I should fail of performing my duty to them, did I not make the proposition which I have made to this Convention, in reference to this amendment. Permit me, Sir, to say, that I may be again, as I unjustly heretofore have been, subjected to the shafts of calumny, from a certain quarter, for the course which I am taking; but I have had, thus far, and trust that I shall continue hereafter to have, but one rule to guide me in this Convention. When I came into it, it was for the purpose of correcting our fundamental and organic law, wherever, in my judgment, it had operated badly with or upon the people; and wherever it had worked well, and we stood well upon it, there, I said, long since, that I was willing to stand, without a change; and where I thus stood, to "stand still." I believe that such are the views of all my associates, in this Convention, from the county of Bristol; and although we may have sometimes voted differently, yet our difference was a manly one, and in good faith, all of us seeking for the best measures and greatest good; but others have levelled at some of us—because we choose thus to act, independent of their direction and bidding—the shafts of detraction and calumny. I presume that there is no one here, from the county of Bristol, who is not perfectly willing to stand up and meet these Parthian arrows of detraction, although they may fall as fast as hail from a summer's cloud; but let me say, that they have been, thus far, *impotent*, because they were hurled at us by a puny arm, and came from a feeble hand. And let me say, farther, that time will soon heal the wounds which have been inflicted by that feeble hand and puny arm, and will soon allay the stings that calumny has attempted and intended.

Sir, to come to the matter in hand, I go for the amendment to the resolution, because the people do not demand the change which is contemplated by the resolution. Let me say, as the gentleman for Erving, (Mr. Griswold,) said the other day, in reference to the loan of the State credit, that the object of this resolution was not a part of the programme of the campaign which preceded the call of this Convention. Will he, or anybody

else, tell me where this amendment to the present Constitution, in reference to elections for representatives, town, or district officers, was put forth, or recommended, in that famous document that was drawn up by him, and sent out to the people? Sir, so far as I know, it made neither part nor parcel of that document. It was not one of those propositions which were there chalked out for us here to act upon. It may possibly be there, nevertheless; but if it is, it has escaped my observation.

But, Sir, I have a deeper and more solid objection than this; and I ask whether our present Constitution, thus far, in regard to this matter of choosing representatives and town officers, has worked well? Permit me to say, still farther, that I hope that your Constitution will remain precisely as it now stands, and has stood ever since 1780, as to the election of your representatives and town officers. Will gentlemen point to a single word in that Constitution that requires by which mode your representatives and town officers shall be elected, whether by a majority vote or a plurality vote? Sir, have there been any petitions from the people laid upon your table, showing that they desire a change of the Constitution in this matter? Again, Sir, I ask, has the table of any of your legislatures ever groaned under the weight of complaints, embodied in petitions from the people, in regard to this matter? No, Sir—No, Sir. Then, if there be no complaint, and has been none, in the community, why make this change? I put it to gentlemen seriously: Why should we make this change? The great complaint has been in reference to the election of your governor, and those officers who have been elected, not by towns, but by the people generally; that it was necessary to have a plurality vote as the test in such elections, because of the great difficulty of calling the whole people of the Commonwealth, or any great portion of them, out a second time. Gentlemen have said, and repeated it, and it has been handed from the lips of one to the other, that your towns were but little republics, and that you could go on and vote perhaps as many as three or four hundred times in a day, in some instances—that in town elections the people are all together; and it has been repeated here, again and again, that your nominations in town meetings for representatives, or town officers, are not made in caucus and in convention, as for State officers, where the nominations are taken from the towns, but that they are nominated upon the spot, and at the time of the election; that these nominations come from the people themselves, when they are all together; and, if this is so, I cannot see, for the life of me, why, in this matter, you should not allow the Constitution to remain as it is. This, as I said before, did not constitute any part of the reasons that were given why this Convention was called; neither has there been any complaint, to my knowledge, in reference to this matter, on the ground that the people did not choose, or had failed to choose, all the representatives to which they were entitled. Sir, whenever it is shown to me that the people demand this change, I shall go heart and hand for it; but, until I do see it, I shall go, not for rebuking them because they have not complained—as you virtually would if this resolution shall pass—but, I am for retaining the good old rule which has thus far worked so well, and in regard to which no one has ever complained. I would leave it precisely as it is; and let me say to gentlemen, in reference to this matter, that if this resolution shall be adopted, then I would make not only the representatives and town officers elective, under a statute such as the legislature may hereafter make, but I would apply it to all your state and district officers. I cannot see any reason why the rule should not be a uniform one, and apply to the whole, as well as a part of them.

Sir, I am not inclined to discuss this matter at any great length; but it seems to me that, unless gentlemen show a substantial reason for making this change in the organic law as it now stands, no such change should be made. I know of no rule in the present Constitution, under, and by which, the legislature might not, at any time, since 1780 down to the present time, have changed the law in an hour, and have adopted the plurality system in the election of representatives and town officers, if it had so pleased; and if there had been any great evils in this matter, arising from the requisition of a majority of the voters, and if the people had felt and suffered inconvenience and wrong, think you that the legislature would not have been called upon, again and again, to make a change? Assuredly, it would.

Sir, I have no great regard for the amendment to these resolutions, on any other ground than that I believe it to be right and a good one. It is not, however, such an amendment that I cherish so dearly as to induce me to vote against the whole of these resolutions, in case it should not be adopted; but it does seem to me, that the Constitution as it now stands, is altogether better than the change which is proposed. I do not believe that the people of the Commonwealth are ready for a change in this matter; and least of all, for such a change as this.

Mr. HOOPER, of Fall River. I shall vote

for the gentleman's proposition to amend, but not for the reasons which he has assigned for its adoption, but for reasons precisely the opposite of those which he has given. I shall vote for it because I am in favor of electing representatives by a plurality vote. I should prefer to have all elections decided on the first ballot; and if I cannot get that, then I would leave the matter to the legislature; and then the people can accommodate themselves, and have the plurality system whenever they choose to have it. I think it altogether preferable to leave it to the legislature to determine, than to put into the Constitution a provision providing for the plurality mode on the second ballot, and only on the second ballot. If that is done, the mode can never be changed until we change the Constitution itself.

I fully concur with the gentleman from Freetown, (Mr. Hathaway,) that as this thing has stood in the Constitution, the legislature might have changed the mode at any time, and have adopted the plurality system. They might have made this change in reference to representatives and all town officers, and therefore I am willing to leave it in that shape; for I believe that the people will see to it, that they will have their views carried out, and that the time is not distant when they will require all elections of town officers, to be conducted on the plurality system.

For these reasons, in brief, I hope that the amendment may be adopted.

Mr. KEYES, for Abington. Since this discussion took place, I have waited without saying a word; supposing that it was well understood that this plan was a compromise between the two parties here, in relation to the questions of plurality and majority. When the Committee reported to the Convention in favor of universal plurality, it was defeated, and it was found that there was a great difference of opinion, a majority of the members of the Convention being in favor of the majority system, and a new Committee was appointed, and a compromise plan was drafted, which, so far from being an unmeaning and imperfect system, was founded on reason in every part of it; and if there had been a disposition to concede anything on the part of either one side or the other, that system would have been adopted without farther strife, by a large majority of this body. I must confess, however, my surprise at the vote just taken; and while I am filled with surprise, I must also be allowed to express my gratification at the fact that this Convention has been saved from lasting disgrace by the casting vote of the Chairman; for, had we lost this question, what should we not have lost? Everything. The liberal party in the Convention would have been defeated in all the most important matters; the Whig party would have been triumphant, and in a fair way to hold the reins of power, for an indefinite period. Sir, had that amendment succeeded, I would have prayed Heaven that the people might have hissed the whole amended Constitution into oblivion.

Now, what is the system before us? It has been mainly adopted, and there was a reason why it should have been adopted. It was adopted as a compromise, on the ground that the Convention was about equally divided upon the subject to which it refers. We have proposed a plan of compromise, basing the elections in part upon the plurality system, and in part upon the majority system. The reason was this, viz.: certain officers elected on general ticket, were restricted to the majority rule on the ground that if the people should fail to elect, and the election should devolve on the legislature, they would still be elected by the immediate representatives of the whole people; and according to this the people would be allowed to nominate their own officers without trouble, or the intervention of others.

In regard to the Senate, the majority system has been objected to, under the present system, on the ground that the representatives of one locality or section, have elected the local representatives of other sections. To do away with that difficulty, it is provided that the Senate shall be elected by a plurality vote, so that each district may elect its own senators, and other district officers, without interference on the part of representatives of other districts.

We supposed that that would do away with every difficulty which existed in regard to the present system.

Those who go for the plurality system in reference to State officers, are at heart in favor of the majority principle for electing members of the House of Representatives. What is the reason that they now go for a plurality system? Why, Sir, because they suppose that they are going to derive some advantage from it. Within the last ten years, the people of the country towns have been deprived of a thousand representatives, by the operation of the majority system. If there be any place where the plurality system is wanted, it is in the election of town representatives. If you want to establish the principle of equality, there is no case on earth, where plurality in voting is justifiable to so great an extent, as it is in the election of town representatives, that the towns may enjoy their own legal rights on the floor of this House. I want to see every town in the State of Massachusetts represented according to

its legal rights, every year, in the legislature; because, let party ties be as strong as they may, they are looser in the country towns than they are anywhere else. In State conventions, the leaders of a party can obtain, and hold control, and the delegates *en masse*, in nine cases out of ten, are mere machines to register their edicts. By this term, I mean no disrespect, but simply to intimate that they usually follow their leaders, either for the reason that they have confidence in them, or because they see no practicable mode of doing otherwise. I have had some experience myself, in regard to this matter. The first time I was elected to the House of Representatives, although belonging to the dominant party, I was just on the extreme verge of it; and, on that account, was considered as being no better than an infidel. But with six of the leaders pitted against me, and without a single voice raised in my favor, I flogged them over and over again, by the aid of the country members. It was upon a party question, to be sure; but the country members are not trained altogether, and solely, to follow party lead; and when they come here, and see how the wires are pulled—which, towards the close of a session, they have generally pretty well learned—they are then able to act independently.

If you will have plurality, therefore, give it to the country towns, that they may always elect their representatives, and not be deprived of such a large fragment of their strength, as is exhibited in that long list which has been presented to us by the gentleman from Boston, (Mr. Giles). Now these are the reasons why a compromise was proposed; and it was supposed that, on these grounds, and with the proposition which the new Committee put forth, the Convention would be harmonized on the subject, if parties were disposed to harmonize at all. But this feeling, I am sorry to say, has not been met in what would seem to me, to be a proper spirit, on the part of members of this Convention; but gentlemen have stood up here, and opposed this compromise, not, as I believe, I may safely say, because they have changed their principles within the last two years, but because of some advantage, which they expect will accrue to their party, from the course they are pursuing. They have their own objects in view, and the men who desire the success of the Whig party, have voted that way, whether they are called Whigs, or by some other name. There is no use in trying to disguise that fact any longer.

Now, in respect to all these resolves but one, and I do not recollect indorsing that one which relates to municipal officers—in the Committee—I hope they will pass. I thought, at least, that in regard to the election of municipal and town officers, the mode was to be left to the legislature. We have comprehended the whole organization of the legislature, and have prescribed the method by which that body shall be constituted; and if any change is to be made, wherein the plurality rule is to be made to apply, it should be, according to my view, to the election of town representatives; because we know that a state of things has existed, and will exist, hereafter, for the next four years at least, which renders it necessary; for there is an impassible barrier between the union of any two of the existing parties within that period; and therefore, I say, that in case of failure to elect, on the part of the country towns, by reason of the majority system, it would be equivalent to reducing their representation in proportion to the number of said failures.

Mr. HATHAWAY. Will the gentleman pardon me a moment. The gentleman entirely mistakes the proposition I made. The proposition which I made, was to leave it entirely within the power of the legislature to determine whether the mode of election should be by plurality, or majority, or any other mode.

Mr. KEYES. In order to have a system which shall embrace the three great branches of the government, so that all the people could understand it, and to place it beyond the possibility of change by the legislature, I should prefer to have the matter fixed and stationary in the Constitution. As regards town and municipal officers, I would leave it to the people themselves, to do as they please.

Now, Mr. President, it strikes me, that if the Convention itself had sat in Committee, and considered what the state of opinion was in this body, as indicated by the votes already taken, and if they had been willing to indulge the same liberal spirit which actuated the Committee, in order to harmonize the views, by conceding something on both sides; then I think that this plan would have been adopted by a triumphant majority.

I have looked at the Convention—prehaps I shall be out of order in saying so—from a hundred miles distance; and when I have seen the votes recorded on several important questions, it struck me that the Convention was not acting upon its own judgment, but that members were actuated by unwise fears of the people. They have seemed to desire to show that they were more economical, for example, than they actually are; they do not seem to me, to have acted as if they were elected to exercise their own judgment and sense of right, according to their ideas, but to take counsel of every bugbear and opinion in the community, so that their course might be shaped accordingly.

How these amendments are to be submitted to the people, I do not know; but so far as the action of the Convention is concerned, in my opinion, it has defeated, in many important cases, the very ends which a large majority of the people desired, especially in relation to the judiciary. The election of judges, by the people, would have been, in my opinion, a jewel in the Constitution, which the people would have rallied most strongly to support. Yes, Sir, the people all over the State, talk to-day about the Convention, as not daring to utter its sentiments, on various important matters, and especially on the question of loaning the credit of the State to private corporations, because a certain portion of the people threaten to rise in opposition to the new Constitution, should it contain any restrictions in regard to that policy. Now a Convention so controlled, is worthy of the hisses and scorn of the people, instead of its votes. How can we expect them to indicate *their* real sentiments, if we stand here cowering before them, afraid to declare our own?

But I will not detain the Convention with anything of that sort; I wish to say, in sincerity, that the Committee was appointed to take up and consider the various views of this Convention. They have given the subject their careful attention, and have brought in a compromise plan, which has reason and common sense as its basis, and I trust it may be adopted.

*Reconsideration.*

Mr. SUMNER, of Otis. I move to reconsider the vote by which the Convention rejected the amendment, offered by the gentleman from Boston, (Mr. Schouler,) if such a motion is in order.

Mr. HOOPER, of Fall River. I should like to inquire of the Chair, whether the motion of the gentleman from Freetown, (Mr. Hathaway,) is not the first motion under consideration?

The PRESIDENT. That amendment is to the third resolve, but the gentleman from Otis, (Mr. Sumner,) moves to reconsider a vote already taken in reference thereto, and it is the subject first in order, under the rules.

Mr. SUMNER, of Otis. I have but few words to say, in reference to this subject. Aware that the Convention must be, to a very considerable extent, wearied with the debate which has been had upon this most important matter; yet from the consideration that in relation to it I have kept silence heretofore, I trust that a few suggestions from me, in support of the motion which I have made, will be entertained.

I make the motion, among other reasons, for this: that it is very apparent from the vote which has been taken, that there is a very strong disposition in this Convention, and out of it, to sustain the plurality principle; and if the votes which have just been given in favor of the affirmative of the proposition were canvassed, I apprehend they will be found to rest upon a large majority of the people of Massachusetts. Sir, I have no doubt of the fact, radical as the proposition may appear in the minds of some, that there is in this Commonwealth a very great majority of the people in favor of a change. I, as one of the friends of this Convention, supposed, from the way in which it was called, and in which the delegates were elected to it, that one of the prominent objects which would be carried into effect by its action, would be the adoption of the plurality system; and no one could have been so deaf as not to have heard, from every section of this Commonwealth, one complete chorus of voices proclaiming that the old majority principle, like many other matters of policy which had been used in this Commonwealth in times past, had become worn out. Once, it was required that our governor, lieutenant-governor, senators, and representatives, should have a property qualification. That requisition answered their day and generation perfectly well. But that has long since been worn out, and others, newer and fresher, have been adopted. And such has been the difference of opinion, so to speak, that the majority rule is now worn out; and I submit, that if the people have demanded any change in the fundamental law of the State, they have demanded a change in respect to the majority rule.

Sir, I do not propose to go into a discussion of this question at length, but I have very great doubt whether, upon a fuller consideration of this subject, this Convention will be content with the limited proposition which is now offered to the people in regard to this matter. I think it is worthy of fuller consideration, and reconsideration, also; and therefore I have made my motion.

Mr. JAMES, of South Scituate. I hope the motion to reconsider will prevail.

Mr. BATES, of Plymouth. I rise to a question of order. I believe a motion to reconsider, must go into the Orders of the Day.

The PRESIDENT. Not upon a collateral question.

Mr. BATES. I also rise to a question of privilege. As appears by the yeas and nays called this morning, and recorded by the Secretary of the Convention, opposite the name of H. C. Brown is recorded the word "yes." To the call of that name the clerk says, there was an audible response, and he so recorded it. The gentleman says he was not in the hall, and did not vote upon

the question. I should like to know how far that matter has been carried, and how many gentlemen have been recorded as voting who did not vote?

The PRESIDENT. It is competent for any member of the Convention who is recorded as having voted upon the question, to call the attention of the Convention to the subject, and have the record amended in that respect, if wrong.

Mr. H. C. BROWN, of Tolland. I was not present at the time the yeas and nays were called. Had I been present, I should have voted differently from what appears by the record.

The PRESIDENT. It is competent to have the record amended, inasmuch as the question immediately pending is on a reconsideration of the vote rejecting the amendment, and if it shall appear that the vote was improperly announced, then the action falls. By reference to the record, the Clerk informs the Chair that the word "yes" is placed opposite the name of H. C. Brown, and it is for the Convention to say, whether a deduction shall be made from the affirmative vote, and if the Chair hears no objection, the record will be amended according to the facts.

No objection was made, and the record was amended accordingly.

The PRESIDENT. The change does not affect the result, and therefore it is unnecessary for the Convention to pursue the matter farther.

Mr. ASPINWALL. It may be as well to suggest at this time, as there are several gentlemen in the Convention by the name of Brown, and a mistake has occurred, that some one of them may have answered to the wrong name. I therefore request that the record may be examined to ascertain whether all the gentlemen by that name are recorded as they answered.

The PRESIDENT. Any gentleman who thinks that his vote is improperly recorded, can examine the journal at his pleasure. The gentleman from Scituate is entitled to the floor.

Mr. JAMES, of South Scituate. I was about to say, when I was interrupted, that I hoped that the motion to reconsider would prevail, and the amendment adopted, and then the Convention will have done one thing which the community desire. I can speak for my own constituents, and for those in the neighboring towns, that they consider this one of the most important matters before the Convention, and are almost unanimously of the opinion that the plurality system should be adopted. We have met with a great deal of difficulty, not only in our elections of members of congress, but in our elections of members of the legislature. For five years the town of Scituate went unrepresented, because trial after trial could affect nothing. I would ask if that is not an evil? That is a sufficient answer to the gentleman from Freetown, (Mr. Hathaway,) who asks if any evil exists in the Commonwealth? That is an evil, and ought not we to lay our hands upon it, and reform the evil? I should be glad to see this matter reconsidered, and to see the plurality system adopted throughout, and I hope the motion will prevail.

Mr. WHITNEY, of Conway. The immediate question, I believe, is upon the motion to reconsider the vote by which the amendment of the gentleman from Boston, (Mr. Schouler,) was rejected. I wish to say a word in reply to the arguments urged in favor of a reconsideration. They are based upon the idea that the people desire the plurality rule, in order to get rid of the inconvenience of a second election. Now, Sir, if gentlemen will examine the Report of this Committee—which is the second Committee upon this subject, and appointed in full view of the votes previously taken upon the subject,—it will be found that they have carefully matured the system they present, so as to avoid a second election by the people. They simply leave the Constitution, in reference to the officers for whom the whole people of the State vote, where the Constitution now leaves it. They provide that the House of Representatives shall send the names of two out of three—instead of two out of four—to the Senate, and that the Senate, from the two thus sent, shall select one. Now, here is the principle of the present Constitution retained, which, so far as I know, is satisfactory to the people. What the people complain of, is the trouble, expense, and ill-feeling growing out of second elections. Now, your Committee have provided against this. They have reported that in the election to be held by the people, when they shall vote for members of the House, and for senators—after they have adopted the amendment—they will vote for those representatives with a full knowledge that they delegate to them the right to vote in the legislature for State officers not elected by a majority vote. Now, I take it, as I have before said—and I must, to some extent, repeat—that the people have no attachment to the plurality rule, as an abstract question. They have no attachment to the idea, theoretically, that a less number than the majority should rule. It is a necessity forced upon them by a division of the Commonwealth into more parties than two, that makes them desire some expedient to rid themselves of the trouble and expense attending repeated elections. The resolutions, as they now stand, meet the desires of the people here, and they will prefer to delegate to their representatives the right to vote in the legislature in case

of failure to make a choice, to being called upon a second time to ballot. They will choose to provide against this in the manner here proposed. I undertake to say, in every town in the Commonwealth of Massachusetts, when a representative is to be elected under your amended Constitution, he will be elected with a direct reference to some man standing before the people as candidate for governor. No candidate for election as a representative could be elected, unless it were understood by the constituency which is to elect him, that he would vote for the candidate for governor, which a major part of that constituency favor, in this House, in case of a failure upon the part of the people to elect their governor, and the election is thrown into the House of Representatives. In case there are three parties, and two unite in their preference for a particular candidate for governor still it is expected that the representatives will carry out the will of a majority of the people in that respect, and the people will take care of this matter when they elect representatives and senators.

Now, Sir, the argument has been brought up, that our governors have been elected by a legislature in which all the people of the Commonwealth were not represented. It must be recollected that under the amended Constitution, if this compromise Report be adopted, we shall not assemble here with vacancies in half the towns in the Commonwealth. By the application of the plurality rule in your election of representatives, you will have filled your House, and there will stand here a representative for every town in the Commonwealth of Massachusetts. And those representatives will come here indoctrinated with the principles of the constituents they represent; they will bring with them the voice of a majority of the people in the towns from which they are elected, in reference to the man for whom they are to vote to fill the office of governor of the Commonwealth. They will come here, and vote, not by ballot, but vote *viva voce*, for there is to be no dodging hereafter in this matter. The men who are sent here must declare by the voice the will of their constituents; and I undertake to say, that men will come here virtually instructed by their constituents to vote one way, and there will be no danger that they will vote another, but they will meet the desires and will of the people who elected them.

Mr. President: I did not come here prepared to discuss this question; but in relation to this motion for a reconsideration, made by the gentleman for Otis, (Mr. Sumner,) I believe that any judicious mind who wishes for the adoption of the amendments which we shall recommend, by the people, would not think it wise or expedient to submit to the people an amendment making so important and radical a change as this makes, which was adopted in the Convention only by a bare majority of one or two votes; adopted by less than a majority of those who favored the calling of a Convention originally, who have the responsibility of calling the Convention, and who will have the responsibility of carrying these amendments before the people. I say, a majority of these men are against a reconsideration of this question, on the grounds proposed, to wit: in order to ingraft upon these resolutions an amendment to be carried by a bare majority. And, I repeat, it is these men who will have the responsibility of carrying the amended Constitution before the people, who object to the amendment proposed by the gentleman for Otis.

Now, Mr. President, I put it to you, I put it to the members of the Convention, whether it would be wise, expedient, or in any sense desirable, for us to go before the people upon any amendment to the Constitution, in relation to which we are about equally divided? There can be no doubt about it. The part of wisdom, then, seems to be, to agree, as we have done, upon some medium ground upon this subject, and stand there. But, Sir, where is the necessity to alter the resolutions? As they now stand, we shall have filled our Senate by elections by the people, for a plurality elects there. We shall have filled the House of Representatives by plurality elections, so that there will be no vacancies there, and we shall thereby have, in the legislature, an expression of a majority-will of the people of the Commonwealth, elected with a direct reference to this question of State officers. A majority of the people will have delegated their power to their senators and representatives to elect their governor, in case they themselves fail in an election. So that, in the election of governor, and of your highest State officers, you will still recognize the great majority principle as the true principle. We shall still preserve that principle in the choice of our governor, lieutenant-governor, secretary, auditor, &c., and we shall keep embodied in our Constitution, permanently, the sacred principle, that, in the majority of the people alone, resides the sovereignty of this Commonwealth. We shall transmit that principle, sacred with our Constitution, to our posterity. Sir, let us not give up that principle. I would keep it in the Constitution, in some form. I would recognize that fundamental doctrine of all republican governments, somewhere in our amended Constitution.

Sir, gentlemen go for the plurality, not because it is right in principle, but because it is a politi-

cal necessity, forced upon them by circumstances now existing in the Commonwealth. This is the only avowed reason. Now, Sir, the Report of the Committee has adopted that principle so far as that necessity exists, but it does not exist in the election of governor, lieutenant-governor, and your other State officers, elected by general ticket. I therefore hope, that we shall stand by the Report of the Committee, and that we shall not vote to reconsider, for the purpose of farther alterations in the amendment proposed by these resolutions. Let us stand upon this ground, and I fear not the people; they will sustain us. I believe we can then go triumphantly before the people with this amendment as it is; and I repeat, I hope the Report will be adopted as it now stands, without any alteration.

Mr. WHEELER, of Lincoln, demanded the yeas and nays upon the motion to reconsider.

The yeas and nays were ordered. (Cries of "question," "question.")

Mr. DANA, for Manchester. I am aware, by the call of "question," "question," which I have just heard, that the Convention wish to come to a vote upon this motion, and I will not, therefore, detain them but a moment. I had the privilege of addressing the Convention, on another occasion, upon the plurality side of this question. I then said all that I deemed it important to say; but, I now wish to call the attention of the Convention, for a moment, to the principles contained in the proposition before us, as it came from the Committee.

When this subject was before under consideration, the question was on the adoption of the plurality or the majority system absolutely; but it now comes before us in the form of a compromise, and to the merits of that compromise our attention is called. Now, Sir, the only distinction, which I can see, upon which a compromise of these two principles can properly be made, is this: In deliberative assemblies, where there can be frequent ballotings taken without inconvenience, and where there is danger of being taken by surprise, the majority principle should be adopted. I would always require it in an assembly like this; I would always require it in your town affairs, and in the election of town officers. But where the people vote in large masses, where they cannot vote often, without very great inconvenience, and where, from the nature of the case, there is no danger of surprise, then, from the experience we have had for the last eight years, I would adopt the plurality rule. I can see no other distinction in principle, than that. It lies between deliberative assemblies which can vote often, and which are liable to be taken by some surprise, and between more large assemblies, which cannot resort to frequent voting without great inconvenience. I am willing to make that distinction. I am in favor of retaining the majority system in town meetings—in voting for town officers—in town affairs, and in the election of representatives to the general court. I would, at any rate, have that matter in the hands of the legislature; I would not tie the hands of the legislature, and if the towns found the majority principle to work too much inconvenience, I would allow the legislature to establish the plurality system for them.

Now, my objection to this compromise system is this: it proposes to retain the majority principle where the reasons are the strongest against it. It proposes to retain the majority in cases where there can be no danger of surprise, and where, from the nature of the case, a second election cannot be held without great inconvenience. You propose, if you cannot get a majority upon the popular vote, to throw the election of your governor and of your high State officers into the legislature. Now, this very system constitutes the strongest objection to the whole majority principle. The result of the plan submitted by the Committee, will be that in your great offices, the people will not elect at all; but these officers will be elected by assemblies which meet in this Hall, and which were not chosen for that purpose at all. I repeat it, your compromise proposes to retain the majority system where the strongest reasons exist for adopting the plurality system, and the result of it will be to place it in the power of the Senate and House of Representatives to elect all the great officers of the Commonwealth.

Now, Mr. President, let we ask gentlemen who advocate this plan, if the most objectionable feature of the present system of election is not that the great officers of the State are elected by the legislature? And will it not be still more objectionable under the system which you propose to adopt, when a larger number of these officers are made elective? There are more officers to be elected by the popular vote now, by the system you have provided, than there were under the former Constitution. It increases the patronage of the people, and in case they fail to elect, will increase the patronage of your legislature; that is to say, we shall increase the evil which already exists under the present system. There is now nearly double the necessity for taking the power from the legislature that there was under the former Constitution.

For this reason, if for no other, I cannot support the proposition reported by your Committee, and throw into the hands of your legislature the election of all these officers, which you propose to

make elective. It is from this very system that this danger of corruption and perversion of the popular voice, from which we have suffered, has arisen. It seems to me that this proposition of compromise is not founded in principle, and that we ought not to support it. Let the people of the Commonwealth elect by one election, their governor, their lieutenant-governor, and all their State officers. I believe it is the will of the people of the State that they should be thus elected, and that the people should not be kept in suspense for four or five months after the election has taken place, before they can know who will be the officers of the State.

Mr. WHITNEY, of Conway, (interposing). I would suggest to the gentleman for Manchester, that the secretary of the Commonwealth, the treasurer, and those officers of which he speaks as having now been made elective, are now elected by the legislature under the present Constitution, so that in case of a failure to elect by the people, the legislature will have no more officers to elect than under the present Constitution.

Mr. DANA. The attorney-general is not.

Mr. WHITNEY. True, the attorney-general is not, but the secretary, treasurer, and auditor, are, and the evil of which the gentleman speaks, therefore, at least, cannot be increased by the system which the Committee propose.

Mr. DANA. Well, Sir, the adoption of the provision, making these officers elective by the people, shows one thing. It shows that it is better that all these officers should be elected by the people rather than by the legislature, so that the gentleman's remark certainly does not affect my argument. I want that the election of these officers shall be taken out of the hands of the legislature and put into the hands of the people. We have taken the appointment of the attorney-general away from the governor and given it to the people. We have taken the appointment of the secretary and auditor out of the hands of the legislature, and yet, with the experience of the last eight years before us, you propose to give this appointing power back to the legislature, for that will be the result of it. No gentleman can be blind to the result. If you adopt this majority principle, it is verbally saying that four out of five times—I am not certain about my arithmetic, but it is somewhere about that—these officers shall be elected upon this floor.

Now, Mr. President, that is the first aristocratic feature of this government, to say that a small body of men—some four hundred or five hundred in number—shall elect the great officers of the State, and to say, that they shall not be elected by the people. Sir, I am opposed to the establishment or continuance of any such principle. It is not a question of electing those officers by a majority of the people. Your compromise plan does not provide for that in its practical effect. You provide, that four out of five shall be elected upon this floor, instead of being elected by the people at all. But, gentlemen should recollect, that if they elect these officers by plurality, they do not vote against electing by a majority. If a majority of the people of the Commonwealth are in favor of any one candidate for governor, a majority will elect, whether the rule be established, that the plurality or the majority shall elect. But, if you cannot get a majority, then the plurality rule provides the nearest approach to a majority, that you can get. For these reasons I cannot support that part of the first of the compromise resolutions.

The last portion of it, also seems to me to be somewhat objectionable. It says, that in the election of representatives to the legislature, a majority shall be required upon the first trial, but that a plurality shall prevail upon the second trial. Now, if the plurality is to prevail, why not adopt it at once? Why not let it prevail at the first trial? By your proposition, in many places, the first trial will be a mere tentative. The people will say, that the first trial will amount to nothing—that they will vote for anybody just to try their hands. Then, upon the second trial, comes the real contest—and it is not apt to be near so fair a contest—not so fair an expression of the public opinion, as if the people knew beforehand, that the first trial would settle the whole matter. Now, Sir, I submit it to the judgment of gentlemen better acquainted with town affairs than I am, although I am somewhat acquainted with them. It is not true, as the gentleman from Boston remarked, that I have never been in a town meeting in all my life. I lived in the town of Cambridge, and attended their town meetings, until Cambridge became a city, and they would not give me any more town meetings to attend. I say, I appeal to gentlemen who are conversant with the proceedings of town affairs, if it is not true, that if the people know beforehand, that the first vote is to be decisive, they would not give a fuller vote, and whether we should not have more fully an expression of the popular voice, than upon any second trial? Why, after the first vote is taken, a few of the leading politicians in the towns will settle the matter among themselves. When the moderator announces the vote, that there is no choice, a majority being required upon the first ballot, and another ballot is immediately opened, what is the consequence? The consequence must be, that a few of the leading men will put their

heads together, agree upon some candidate, and he will go right in. Will not that be the result? The second trial will follow so closely upon the first, that the people will not have time to consult together at all; no time for deliberation; and so the whole matter will be settled by a few of the leading politicians. It seems to me, therefore, that as to the towns, we had better not tie the hands of the legislature. I think we had better allow them to remain as they are, for the present, but to leave the matter in the hands of the legislature, so that, if in the course of time, they get tired of their majority elections, they can come to the legislature, and the legislature can release them, and give them the plurality system. I am willing that they should have the plurality rule, if it should be found expedient for them; but I think it would not be a wise course for us to tie their hands, and the hands of the legislature, in relation to the matter, by declaring in the Constitution, that they shall elect by plurality.

Now, I submit to the Convention, whether it would not be the simplest thing after all, and whether it would not be better to adopt the plurality system for everything except town affairs, and leave that matter in the hands of the legislature. I had prepared an amendment to this effect, but of course it is not in order to offer it now. I hope, however, that the motion to reconsider will prevail, and that something like that result will be reached—that we shall adopt the plurality plan throughout, except in regard to the town elections, and that they may be left to the legislature to provide.

Mr. TRAIN, of Framingham. I move the previous question.

Mr. KEYES, for Abington. I hope the previous question will not be sustained. It is very easy as we have just heard, for gentlemen to adopt a principle and then to suit their plans to it. There is another principle which should be illustrated, if we had an opportunity, and it is a principle which happens to be in accordance with the whole scheme, as I said before——

The PRESIDENT. The question is upon sustaining the previous question.

Mr. KEYES. I only want to say this, that this is not the time to take the vote; I think this is a very important question——

Mr. TRAIN. I rise to a question of order, that the gentleman is not discussing the previous question.

The PRESIDENT. The Chair does not understand the gentleman as yet to be debating the main question.

Mr. KEYES. I believe that this Convention thoroughly understand this question, and the principles upon which this plan was adopted in Committee.

The PRESIDENT. It is not in order for the gentleman to discuss the merits of the question.

Mr. KEYES. I am stating the reasons why discussion should be had, and why the previous question should not be sustained at this time. Drummers have been sent here to assist my friend for Manchester (Mr. Dana,) to help the Whig party to sustain its life; and the reason why I hope the previous question will not be sustained is, if the case was thoroughly understood, that the question would not be decided as it might be under other circumstances.

Mr. WILSON, of Natick. I wish to say a single word in relation to this motion for the previous question, which has been moved by my very adroit and skilful friend from Framingham, (Mr. Train). I wish to say nothing in regard to this matter which is not distinctly understood by the members of this Convention. The delegate for Abington has hinted at the matter. I wish to say that one of the reasons why the previous question should not be taken at this time, is this: we now see the advantage, to which allusion has so often been made, that the city of Boston has upon this floor. I wish simply——

The PRESIDENT. The Chair would suggest to the gentleman from Natick, that he is entering upon a wider field of discussion than the motion for the previous question would warrant.

Mr. WILSON. I wish simply to say in relation to this matter, drummers have been out, and gentlemen from sick beds are here; and we are to have the advantage of the votes of these gentleman, at this particular time, for the first time in the session; and we are to be cut off from the discussion of this question. Debate is to be stopped, and the previous question forced upon us at a particular time to serve a particular purpose.

Mr. SCHOULER, of Boston. I hope the previous question will be sustained. This is a question simply upon a reconsideration. If we vote in favor of a reconsideration, the whole question is open for discussion, and as much discussion as the gentleman for Abington and the gentleman from Natick could desire. It is a mere matter of reconsideration, and I hope, therefore, that the motion will prevail.

Mr. ALLEN, of Worcester. I was gone out of the Convention a short time, and on returning, to my great surprise, I find this state of things existing. Before I went out, upon one side of the House there was an earnest desire that there might be free opportunity to discuss all important questions here, and that no limitation should be

imposed upon debate. In accordance with the wish of gentlemen upon that side of the House, and expressed in various quarters by their leading men, I thought we were to have a free and full discussion. But, to my astonishment, I find those same gentlemen pressing, at this moment, the demand for the previous question. If they insist upon it, I trust that they will not complain hereafter, if the majority should adopt rules, such as may suit them, upon the subjects discussed, and rigidly adhere to them. I think that if members of this Convention have occasion to look back to the changes of opinion which have been expressed on other occasions, and manifested from time to time by that same minority, they will see, in the sudden change which has taken place in all their views this very morning, and this very hour, upon the subject of free discussion, that some motive, not quite so apparent to all, may exist, for pressing the previous question at this time. I hope it will not be urged, because upon the right decision of the question now under consideration, —I will not say how it should be decided,—may depend the whole result of this Convention; for gentlemen may rely upon it, that this is a question of vital importance to the business we have before us, and the adoption or rejection of our labors may depend upon our harmonious action in this matter. In a Convention so equally divided in regard to this subject, it seems to me the most unfitting time that has occurred, from the commencement of our deliberations, for the adoption of any rule which shall put an end to all debate.

Mr. LORD, of Salem. There is one consideration which influences me very strongly to desire a vote upon this question. I wish to see how gentlemen feel under it. That is the only consideration which induces me to vote for the previous question. When debate has been stopped, over and over again, upon a subject which had not been half discussed, gentlemen felt remarkably well, and I desire to see how they feel now, when there is a proposition to stop debate upon a subject which has been debated more than all others put together. The principle I hold to, in reregard to this matter, is, that debate, like trade, should regulate itself, and that when the subject is exhausted, debate will cease. That is the principle upon which I act. Now and then gentlemen will feel it necessary to talk a little against time. For example, if it should be deemed inexpedient to take the yeas and nays fifteen minutes before the hammer should come down for the hour of adjournment, it would be well enough to talk up to that time, because you cannot conveniently take the vote at that time. It has been suggested here that the House is fuller, and that there are more gentlemen to vote here now than there were before; but this fact, to my mind, is no argument against the previous question. If there were three hundred and twenty gentlemen present when the question was taken before, and there should happen to be three hundred and fifty here now, I do not think that is any reason why we should not vote now in preference to voting in a thin House.

The PRESIDENT. The Chair would suggest to the gentleman from Salem, as he did to the gentleman from Natick, that he is entering upon a wider field of remark than the motion for the previous question would warrant.

Mr. LORD. I was not replying to what the gentleman from Natick said about drummers, but only speaking to what the gentleman said about there being more persons here now than there were before.

Mr. WHITNEY, of Conway. I think the previous question should not prevail at this time, because the main question is a reconsideration of the vote which we have just taken. We have had no time to review and reconsider the question, and we do need the time until to-morrow for the examination of this question. The previous question, if sustained, will precipitate this important question upon us now, at a time when we are unprepared for it. I think, after a tie vote upon this matter, and which has been decided by the vote of the President of the Convention, that we do need twenty-four hours for a consideration of the main question, and that gentlemen should not press a reconsideration of this matter upon the spur of the moment. I hope the previous question will not be sustained by the honest and fair-minded men of this Convention. I ask it as a privilege, so that I may reflect upon this question until to-morrow. I may change my vote upon this subject, upon farther consideration, and I not know what I may do to-morrow. I hope gentlemen will give us all an opportunity of getting more light upon this matter, and for that reason I hope the previous question will not be sustained.

Mr. HILLARD, of Boston. It occurs to me, if I understand the operation of the motion to reconsider, that the delegate from Conway will gain the very advantage which he desires. If the motion to reconsider prevails, the whole subject is open for discussion and consideration as it was in the early part of the day. I would suggest, by way of meeting the wishes of all, that we shall agree to take the question to reconsider by yeas and nays, and if that motion should prevail, that we assign some hour to-morrow for taking the

question upon the amendment, so that there may be no surprise; for I take it, the difficulty in this matter is, that there is an uneasy feeling in the minds of those who were absent, that they had not voted, and all parties, whatever may be their opinions, will be content with the result, if they have as full expression of the sentiment of the Convention as it is possible to get.

Mr. ALLEN, of Worcester. I move that when the vote is taken on the motion for the previous question, it be taken by yeas and nays.

Mr. TRAIN, of Framingham. I merely wish to set myself right upon this matter of the previous question. I am not aware that I ever moved the previous question before in my life, although I have had a little legislative experience, not enough, however, to acquire the reputation for adroitness which my friend from Natick, (Mr. Wilson,) would give to me; but then it is a habit in our country, to pat each other upon the shoulders, and call each other good fellows. [Laughter.] I rose to address the Convention amid cries all over the House, for the question, and like an adroit lawyer, I covered my retreat by saying that I rose to move the previous question, which I thought would come from me with exceeding good grace under the circumstances. [Laughter.] Then my friend for Abington, (Mr. Keyes,) rose, under some degree of excitement, proper excitement I will admit, and desired to make a speech upon this question. With the utmost degree of fairness, I then offered to withdraw my motion, if, after he had made his speech, which I wanted to hear, he would renew the motion; but he would not do that. When you cannot suit others, it is the best way to suit yourself; and, therefore, although I have been interceded with to withdraw the motion, I shall persist in adhering to it, because I think the motion was made fairly and properly. If the Convention choose to reconsider, the whole discussson will be then opened, and those gentlemen who have not spoken, or who wish to repeat their old speeches, can have the opportunity of so doing. Having stated the reasons which induced me to make the motion I did, and having, I trust, set myself right before the Convention, and thanking the gentleman from Natick, (Mr. Wilson,) for the compliment which he has bestowed upon me, I have said all that I desire to say.

Mr. BRIGGS, of Pittsfield. I would like to know, if we commence calling the yeas and nays, we lose our dinner? [Laughter.] Mr. President: I shall most certainly vote against the previous question, whether the yeas and nays are taken upon it or not. I feel a little as my friend from Salem, (Mr. Lord,) does. Our friends must feel what it is to be skinned themselves. We have got used to it, so that it hardly makes us smart when the skin is peeled off. But I do not believe in the previous question except upon extraordinary occasions, and I do not think this is one. We have a full house now, and I hope we shall have a vote this afternoon. If we take the question now and should happen to succeed in it, it settles nothing. Sir, no snap judgment here, is worth anything, and it should not be sought by any party or the friends of any measure. On all important questions, I hold that we should let debate run its course. It is very important that it should, and more important that questions should be settled right, than it is that we should settle them before dinner, or to-day, or to-morrow. I wish we could agree upon some time to take this question, and then upon some time to take the main question, if it is reconsidered, and then see that our friends in the city are all here, for I do not think it would be unconstitutional to have them all here once to vote, and I do not think it would be an alarming concentration of power for them all to be here once during this Convention. I wish, for these reasons, and others which might be stated, that we might, by common consent, fix upon some time, either this afternoon or some other, when we will take the vote on this question on the motion, so that we may have a full Convention and a fair vote, and one which will settle the question satisfactorily.

Mr. GRAY, of Boston. I do not feel disposed to vote for the previous question, and I need not travel over the reasons which have been generally given by other gentlemen; Sir, I have been against limiting debate in any way, either by the previous question or by fixing an hour for taking the question, because I have yet to see a single instance in which there has been any speaking, to to any extent, against time. But I cannot agree with the suggestion of my colleague, to take the question without the yeas and nays, because he will recollect that if the motion for reconsideration succeeds, it is very well. The whole question will be open; but suppose, in taking the question upon the motion for reconsideration by yeas and nays, it is rejected; that vote is final. Now, what I suggest is this: that, under the circumstances, the motion for the previous question should be withdrawn. Then I am ready to go with my friend from Pittsfield and fix some time to take the question, which will give gentlemen an opportunity to debate it to the fullest extent; and when that time comes, if farther debate is really wished, I hope farther time will be given. I should be very glad to see every one of my col-

leagues, as well as both of the intelligent and respectable members from Pittsfield, and every member of this Convention, present, when the vote is taken; and if I knew of any drum to be beaten which would bring them all in, for the first time in my life, I would lend a hand at the work.

Mr. LORD, of Salem. It is my impression, that a motion for the previous question, cannot survive an adjournment. If I am right, inasmuch as we have ordered the yeas and nays on the motion to take the previous question, I will, for the first time in my life, move an adjournment. I ask, if the motion for the previous question lives over an adjournment?

The PRESIDENT. It does not.

Mr. LORD. Then I move that the Convention adjourn.

The motion was agreed to, and the Convention adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

*Reconsideration.*

Mr. HOOPER, of Fall River, moved a reconsideration of the vote, by which the resolves relating to the limitation of the incorporation of towns, was indefinitely postponed.

The motion was placed upon the Orders of the Day, to be considered to-morrow.

Mr. HOOPER. I move that the rule be suspended, so that the motion to reconsider may be considered at this time.

Mr. ASPINWALL, of Brookline. I hope that the rule will not be suspended, but that we shall go on with the unfinished business of the morning.

Mr. LORD, of Salem. I think it is hardly worth while to change the order of business, unless there be some special reason for doing so. If the order is to be changed, it ought to be known beforehand. I therefore ask, or shall, before I sit down, that the question be taken by yeas and nays.

The PRESIDENT. The motion to suspend the rule, is not debatable.

Mr. LORD. Then, inasmuch as we have, at present, rather a thin House, if the gentleman does not withdraw his motion, I must ask for the yeas and nays.

Mr. HOOPER. I supposed there would be no objection, and that the matter would not give rise to debate; but, as objection is made, I will withdraw my motion.

The motion was accordingly withdrawn.

*Perpetuation of the Records.*

Mr. BIRD, of Walpole, from the Committee appointed under an order of May 5th, to consider and report what measures were necessary for the Convention to adopt, to continue and perpetuate its records, made the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 19, 1853.

The Committee appointed under the order of the Convention of May 5th, viz.: "*Ordered*, That a Committee of five be appointed, to consider and report what measures it is desirable for the Convention to adopt, to preserve and perpetuate its Records," have attended to that duty, and submit the following resolves.

For the Committee,

F. W. BIRD, *Chairman.*

*Resolved*, That at the close of the session, the Secretaries of the Convention deposit the original Journals, together with the papers of the Convention, in the office of the Secretary of State.

*Resolved*, That William S. Robinson prepare an Index to the Journal, and procure two thousand copies of the Journal and Index to be printed and bound, on such terms and in such manner as shall be approved by the Committee on the Preservation of the Records, and that he be paid four dollars a day for his services therein.

*Resolved*, That his Excellency the Governor be requested to draw his warrant on the treasury for such expenses incurred in the execution of the preceding Resolves, as shall be approved by the Committee on the Preservation of the Records.

*Resolved*, That the Secretary of the Commonwealth be requested to distribute copies of the Journal to each member of the Convention, and to all persons and public bodies mentioned in chapter 2, section 2, of the Revised Statutes, excepting members of the Legislature.

The Report having been read, Mr. BIRD moved that it be considered now.

The motion was agreed to.

The question being taken on the adoption of the Report of the Committee, it was decided in the affirmative.

*Assignment of time for taking the Question.*

Mr. WILSON, of Natick, moved that ten o'clock, to-morrow, be assigned for taking the question on the resolves on the subject of Elections by Plurality.

Pending which motion, Mr. LORD, of Salem, moved that the Convention proceed to the consideration of the Orders of the Day, which being a privileged motion, had precedence over the motion of the gentleman from Natick. And the question being taken, it was decided in the affirm-

ative. And the Convention thereupon proceeded to consider the

*Orders of the Day,*

The first item being the resolves on the subject of

*Elections by Plurality.*

The pending question being on the motion of the gentleman from Otis, Mr. Sumner, to reconsider the vote by which the amendment offered by the gentleman from Boston, (Mr. Schouler,) had been rejected.

Upon this motion the yeas and nays, having been previously ordered, were taken, with the following result—yeas, 146; nays, 188:—

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Beebe, James M.
Bigelow, Jacob
Bliss, Gad O.
Bradbury, Ebenezer
Braman, Milton P.
Breed, Hiram N.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Choate, Rufus
Coggin, Jacob
Cogswell, Nathaniel
Cole, Sumner
Conkey, Ithamar
Cooledge, Henry F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Cummings, Joseph
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dawes, Henry L.
Deming, Elijah S.
Denton, Augustus
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Foster, Aaron
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner Henry J.
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hillard, George S.
Hindsdale, William
Hobart, Aaron
Hopkinson, Thomas
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Giles C.
Kingman, Joseph
Kinsman, Henry W.
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Kuhn, George, H.
Ladd, John S.
Leland, Alden
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Peabody, George
Pomroy, Jeremiah
Powers, Peter
Putnam, John A.
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Stevens, Joseph L., Jr.
Storrow, Charles S.
Sumner, Increase
Talbot, Thomas
Taylor, Ralph
Thomas, John W.
Tileston, Edmund P.
Train, Charles R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilbur, Daniel
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, J. B.
Wilson, Milo
Wood, Nathaniel

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Alvord, D. W.
Baker, Hillel
Ballard, Alvah
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Boutwell, Geo. S.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Daniel E.
Chapin, Henry
Churchill, J. McKean
Clarke, Alpheus B.
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Crane, George B.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Freeman, James M.
French, Charles A.
French, Samuel
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.

Giles, Joel
Gooding, Leonard
Graves John W.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra 2d,
Hewes, William H.
Hobart, Henry
Hobbs, Edwin
Hood, George
Hooper Foster
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lincoln, Abishai
Little, Otis
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, William S.
Newman, Charles
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Taft, Arnold
Thayer, Willard, 2d
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Underwood, Orison
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Whitney, James S.
Wilbur, Joseph
Williams, Henry
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Allis, Josiah
Appleton, William
Austin, George
Bancroft, Alpheus
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Beach, Erasmus D.
Beal, John
Bell, Luther V.
Bishop, Henry W.
Blagden, George W.
Bliss, Willam C.
Brown, Adolphus F.
Brownell, Frederick
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Childs, Josiah
Clark, Salah
Cole, Lansing J.
Cook, Charles E.
Copeland, Benjamin F.
Cressy, Oliver S.
Crittenden, Simeon
Crowninshield, F. B.
Curtis, Wilber
Davis, Robert T.
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Ely, Joseph M.
French, Rodney
Gooch, Daniel W.
Greene, William B.
Hall, Charles B.
Harmon, Phineas
Haskell, George
Holder, Nathaniel
Houghton, Samuel
Howard, Martin
Huntington, George H.
Kellogg, Martin R.
Knowlton, Charles L.
Langdon, Wilber C.
Lawton, Job G., Jr.
Lowell, John A.
Marvin, Theophilus R.
Nash, Hiram
Nayson, Jonathan
Norton, Alfred
Paine, Henry
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Payson, Thomas E.
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Preston, Jonathan
Prince, F. O.
Putnam, George
Ring, Elkanah, Jr.
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sherman, Charles
Simmons, Perez
Stevenson, J. Thomas
Stutson, William
Sumner, Charles
Swain, Alanson
Taber, Isaac C.
Thayer, Joseph
Turner, David P.
Tower, Ephraim
Tyler, William
Wallace, Frederick T.
Warner, Samuel, Jr.
White, George
Woods, Josiah B.
Wood, William H.

Absent and not voting, 85.

So the motion did not prevail.

The question recurred on the motion of the gentleman from Freetown, (Mr. Hathaway,) to amend the third resolve so as to provide that representatives in the general court be, hereafter, chosen as by law shall be established.

The question was taken, and the amendment was rejected.

Mr. WILSON, of Natick. I now move to amend the third resolve by substituting the following:—

*Resolved*, That the Constitution be so amended as to provide that in all elections of representatives to the general court, when no election is effected on the first trial, the meetings may be adjourned, from time to time, until the meeting of the legislature to which the said representatives are to be chosen, provided that no one adjournment shall be for a longer time than six days.

Mr. WILSON, of Natick. I will detain the Convention but a few moments on this question. I am willing, although I am in favor of adhering to the majority system, to depart from that system under the pressure of necessity. By the Report of the Committee, senators are to be chosen by the plurality rule, and county and district officers are

also to be chosen by that rule. I see a necessity for this, and I am willing to acquiesce in it. But I see no necessity for making the representatives and town officers elected by the plurality rule; none whatever. Gentlemen may say that it is necessary in order to secure a representation from all the towns in the Commonwealth. I say to gentlemen, you cannot secure a representation by the plurality system. It is competent for the towns of the Commonwealth, when the voters are assembled together, to vote not to send a representative; and if there be three or four political organizations in those towns, and if the plurality rule prevails, the minorities will unite and vote not to send, without any trial at all, or after trying once under the majority system, which the resolutions propose to retain. I say, therefore, to the friends of the plurality system, you certainly gain nothing by its application to the election of representatives; nothing, whatever. You may adopt that rule if you please; but you cannot force the minorities in any of the towns of this Commonwealth to elect a man under the plurality rule. Now, adhere to the majority principle in town elections, and in the election of representatives; take off all constitutional restraints; allow the towns to adjourn from day to day, or from one day to another, not exceeding six days; to call new meetings at their pleasure, from the time the annual meeting is held to the time of the meeting of the legislature, and then, if there be a necessity, there will be a union of men in those towns, and they will elect representatives; and in my judgment, under the majority system, you will secure as full a representation from the towns in this Commonwealth as you can get by the plurality rule, because you cannot take from the people the power to vote not to send, if they choose to do it, under the plurality rule. They will exercise that power. Then let this system stand as a compromise.

I understand that this was the position of affairs when the question was sent to the Committee the second time. A vote, and the largest vote taken during the Convention, was that upon the State officers, by which it was required that they should be chosen by a majority, and it was also agreed by the same vote that senators, county and district officers, should be elected by a plurality; but that in the election of representatives and town officers, a majority should be required. I am ready to stand by that vote, as a compromise. But I do not like this present Report. Gentlemen tell us this is a compromise. What kind of a compromise is it? Why, we agree that your Constitution shall say that the senators shall be elected by a plurality; we agree to elect representatives on the second trial, and all the town officers on the second trial by a plurality. Then we have abandoned the majority rule altogether, as far as the principle is concerned, and we have simply saved the principle so as to apply it to six officers, to be elected by the people of the whole State.

The gentleman from Salem, (Mr. Lord,) told us that he saw through this plan. That gentleman is very keen-sighted, and sees all that is to be seen. He sees, or thinks that he sees, the reason why this plan is made. It carries on the face of it something that looks very much like an arrangement for party ends. But, Sir, let us have the representatives and the town officers elected by the majority system. The election of these officers is a question of as much moment and importance as any other question that the people themselves can direct and control in their own primary meetings. And then we have adopted a system, a compromise system, and one which I am ready and willing to sustain. But if we are to adopt the Report of the Committee, if we are to elect representatives and town officers by a plurality rule, I say frankly and freely, for one, you may take the plurality system altogether;—take it, and let it have free course and be glorified.

Mr. HOOPER, of Fall River. I am exceedingly surprised at the remarks of the gentleman from Natick. I had supposed that this Report was a compromise, and had made up my mind to stand by it as such. It is well known, that in the first instance, I was in favor of the plurality system throughout. But I found that gentlemen differed; and I was willing, as I could not get the whole, to take half of it rather than have none. I supposed that the Committee thought this Report equitable, and I came to the conclusion to support it. I confess it has taken me altogether by surprise, that the gentleman has made the motion which he has. The class of officers to which he alludes, is that to which I wish to have the plurality principle apply. I prefer that it should be applied in the first instance; but if we cannot have it in the first instance, let us have it at the second trial, and let town officers be elected in the same manner. The greatest complaint in the town which I represent is, that we have not been able, for several years, to elect our town officers without great delay and inconvenience. Now, we want this remedy, so as to have an opportunity to elect them at the second trial, at least, if we cannot have it at the first. I was in hopes that we should take this Report as a compromise on which we could all stand; so that we should all feel that we have succeeded in obtaining what we wish, in part, at least. I hope that

the gentleman from Natick will take this view of the matter, and that we shall adopt the Report without farther amendment, since the amendment of the gentleman from Freetown, (Mr. Hathaway,) has been rejected. There seems to me a propriety in making this distinction, if you make any; that you should leave those officers who are to be voted for by the people of the State, so as to apply the majority rule to them. It has been said here that the judges are elected by the people, because they are appointed by a governor who is elected by the people. In the same way, we may say that these officers will be elected by the people, because they will be elected by a legislature which is elected by the people. If the argument is good in one case, it is just as good in the other. Now, in that view, as long as we can have the will of the people represented in the legislature, it is only at second hand that we elect these officers; and I think, that if we exclude any from this rule, these officers are the proper ones to be excluded. There was a strong reason why the senators should be elected by plurality; for if not elected at the first trial by the people, their election was transferred to another constituency, other than the one they represent. The people in the small towns are immediately interested to have this pass, because without it, many of them will fail to be represented. But the gentleman says, we shall not compel them to send representatives, because they may vote not to send, if they please. That is true; but it will seldom take place. The result will be, that when it is found there will be an election, men will take measures to see that the right candidates are put in nomination, and they will attend the polls to see that their election is made secure; consequently, a better class of men will be elected than we have had under our majority system. I hope that the amendment of the gentleman will not prevail, but that the Report of the Committee will be adopted as it now stands.

Mr. FRENCH, of Berkley. Mr. President: I am rather astonished at the gentleman from Fall River. He appears to want a plurality to elect town officers, and I know that they have been embarrassed in that place on account of not being able to elect their town officers. But I cannot hardly understand what the gentleman wants. To this third resolution I had intended to have offered an amendment, if it had not been done by the gentleman from Natick; because I do not think it looks proper, as it now stands. At the first ballot a majority is to elect; and then it is provided that if a majority fails, an election shall be had by a plurality. Well, Sir, what do you want a second vote for? On the very first vote, you have a plurality, if you do not have a majority. But it seems to me to be proper that the people should not come together upon two bases for electing representatives and town officers; that they should try one at a time, and if that did not succeed, they could have another meeting and time to take breath, and take a sober second thought. Now this accomplishes all the gentleman asks for; for if they are not elected by a majority on the first ballot, they are sure to be elected by a plurality at the second meeting. All the difference is in two meetings. That is all; and I do not see but the gentleman may be accommodated under this amendment. I am in favor of this amendment, and I believe it to be right.

Mr. ABBOTT, of Lowell. I desire to say a single word on the amendment of the gentleman from Natick, and I am free to say that unless that amendment prevails, I, for one, am disposed to put myself on some sort of principle. I am disposed to go for the compromise, or else for the plurality, or else for the majority. [Laughter.] But as the matter is, at this present time, as it seems to me, I am going for neither the one or the other; or, to use a more common expression, the scheme presented by the Committee is "neither fish, flesh, nor good red herring." For my part, I do not wonder that my friend from Fall River is willing to go for what he calls a compromise; but I ask if he expects those who are in the position that I am, those who believe in the majority principle, that it is the true conservative power where the power is in the hands of the people, who believe that a man has a right to shelter himself, and his conscience, and will, behind the heart of the people; I ask if he believes gentleman who believe that, can go for this compromise? A compromise, indeed! It is a compromise which is all on one side. I want to know how much I, as a majority man, get here by this compromise?

I want a majority, or I want something like a majority in the law-making part of this government. I do not care so much whether it be a plurality or a majority in the little petty offices, or the great offices, if you please, where men are chosen every year merely to execute and carry out the laws which are made by the law-making part of the government; but I want a majority in the law-making part of the government, and when I am called upon to vote for the men who are to make the laws, before I have to give up my will and my way, I want to know, and I think I have a right to know, that the majority of the people go for that particular thing. I want the right to call upon a majority, and not upon less than a majority,

or upon every little faction that may come up and get so as to number one more than any other faction in the community. Well, Sir, how is it in this compromise, as they call it? You are to vote for your governor, attorney-general, and some other officers—how many I do not know, and do not care—once, and if you do not choose them by a majority, they are to be chosen by whom, I pray you, Sir? They are to be chosen by two bodies, who are to be elected upon the plurality system, and the worst kind of plurality that can be brought into this House, or anywhere else. It is something that gentlemen cannot wink out of sight, or keep out of sight, that you have provided here by your vote, that a majority of the House of Representatives may be chosen by one-third part of the people of this Commonwealth; and now you ask gentlemen to allow your governor and the other great officers to be elected by that House so chosen, and by the Senate, who are elected by pluralities. I do not regard the first trial by majority, as anything—that is merely tentative; it is merely a feeler, as my friend for Manchester, has told us. But, on the next election, you abandon the whole; and yet you talk to me about principle, when you have given up all principle, and all that you have got in exchange, is something to go into the legislature and trade upon. Somebody else besides the gentleman from Salem, will come to the same conclusion, and see the same thing; you have given up principle and got something that you can trade upon in the legislature. That is so apparent, that it sticks out in every direction; the lion's skin is not a quarter large enough to cover something that I will not give any name to. Now, Sir, gentlemen expect persons who believe as I believe, in the majority principle; who believe that it is the true conservative doctrine, that a democrat should put between him and harm; that the great will of the people, the great heart of the people, is seldom if ever wrong, when a majority are suffered to give expression to their views—they expect that we, believing all this, can go for this compromise where we give up everything, and gain nothing that will do us any good—gain nothing that in my humble judgment will not be a reproach to us forever after. I say, if the gentleman from Natick, would take the Report of the Committee as it is, I, for one, am prepared to go for it, and accept the plurality system to that extent. While this is not a fish, that would be, although I agree with him, that this smells mighty fishy.

Mr. GARDNER, of Seekonk. I have not detained the Convention at all upon this question, although I have listened with much interest to the remarks of other gentlemen who have spoken upon it; but, before the question is taken, I wish to express my views in short, in regard to it. I must say, that I am obliged to differ with my friend from Fall River, (Mr. Hooper,) and many other gentlemen of the Convention, who have stated here, that the people of the Commonwealth were dissatisfied with the present system, and in favor of the plurality system. I think that I know something myself of the views and feelings of the constituency which I represent here, and the people of that part of the State. To be sure, I am from the same county with my friend upon my right, (Mr. Hooper); but, Sir, I do not believe that a majority of the people of the county of Bristol, or of this Commonwealth, are at present prepared for the plurality system, even so far as we have already adopted it. I hope, therefore, that the amendment which has been offered by the gentleman from Natick, will be adopted. I think gentlemen may, perhaps, make up their minds for themselves, in some instances, better than they can for their constituents. I think they are mistaken in supposing that the people desire so many reforms in the Constitution. We have made some which are salutary and democratic in their tendency, which are well conceived, and which I have no doubt will be adopted by the people; but I doubt very much, whether we have made a judicious reform in the manner in which we have settled the basis of the Senate; I should have preferred that it had been based upon legal voters. In regard to the plurality question, I hope the amendment of the gentleman from Natick will prevail; and if it should not, I should like to move an amendment to the third resolution, which would be, to strike out all after the word "election." I should prefer that, but still I shall give my vote, with great pleasure, for the proposition which has been made by the gentleman from Natick. I have not, upon any occasion, detained the Convention with any very protracted remarks; nevertheless, there are some questions which have been taken here, in cases where the previous question has been unexpectedly ordered, or some motion has been made that the question should be taken at a specified time, so that the gentlemen, who, like me, happen to sit in the rear of the hall—though with my own position I am well pleased—have not had an opportunity to express their views. At any rate, I will take the liberty to say, that some questions have been passed upon, in a manner which, in my judgment, needs to be reviewed, before we adjourn. Although I am in favor of bringing the doings of the Convention to a close as speedily as possible, yet I hope, that what we do will be done for the public good; and I hope that this question will

be discussed, if need be, until we shall vote down the propositions contained in these resolutions.

Mr. TRAIN, of Framingham. I am very happy, Mr. President, that the gentleman from Natick has moved this amendment; because, Sir, it has given me an opportunity to know that that gentleman, and my friend from Lowell, (Mr. Abbott,) have been brought to a realizing sense of their condition. [Laughter.] In other words, they have been brought to appreciate that the Report of this Committee is by no means such a proposition as this Convention should go for; that it is an attempt, either intentional or unintentional, to place the chief offices in the Commonwealth in the hands of a legislature who may be chosen by a majority or not, as political capital upon which to truck and dicker. Now I think, that, as a member of the minority of this Convention, in relation to the remarks of those gentlemen, I am entitled to speak right out, without keeping anything back. We have been told, by the member for Manchester, by the member from Natick, and by the member from Lowell, all leading minds in this Convention, that that is the result of this Report; and I think that I am assuming nothing, as a member of the Whig party in this Commonwealth, when I say "Amen" to their declaration. We are called upon to vote here that senators and councillors should be chosen by plurality; that district and county officers should also be chosen by plurality; but that six of the highest officers in the Commonwealth should be chosen by a majority, and that failing, that they should be chosen by the legislature. Now I should like to have some gentleman who has astuteness enough, point out the principle upon which this distinction is made. I have been unable to see it. I agree now, as I always have done, to the general doctrine, that if you apply the plurality principle in one instance, you are bound to apply it in the whole. I need not recapitulate the arguments which have been gone over in the course of the debate upon this subject, because it is well understood, and I think it must be conceded that the argument of necessity alone—if it is an argument—should induce the people of this Commonwealth to adopt the plurality system; and I do not rise for the purpose of going into an argument generally upon the propriety of adopting either the plurality or the majority system, but for the purpose of addressing myself to the amendment of the gentleman from Natick; and, Sir, having been born and educated in one of the country towns of Massachusetts, I know of nothing that would be more oppressive, that would create more hardship, and would place the House and Senate more in the hands and in the power of the money of Massachusetts, than this amendment which has been offered by the gentleman from Natick. The proposition, as I understand it, is that if a majority fails to elect at the first ballot in any of the towns, they may adjourn from day to day for the purpose of election, provided, that that adjournment does not extend beyond six days. Now, Sir, I desire to know how many towns there are in this Commonwealth where a majority of the people can afford to go to town meeting from the first Monday in November until the snow flies? I do not know of any such towns. In my town we have seven hundred voters, and there may be one hundred and fifty out of the seven hundred who can afford to go to town meeting from the first Monday in November, until the legislature meets, but there are not more than that. At the first town meeting perhaps there will be five hundred voters out of the seven hundred, and you can get a large expression of the people of the town; but at the next election there would not be more than half of the whole number there, and after that there would be but a small fraction. These men find that it is a great expense of time and money to go to town meeting so often; and hence the oppression of the amendment of my friend from Natick. In my own town I have three hundred constituents who work by the day in the cotton factory, or who work at manufacturing boots and shoes; and every day that they go to town meeting causes them a loss of from one to two dollars each, which they need to appropriate to the support of their families; and are we to be told now that we should vote from day to day from the first of November, until the legislature meets, for the purpose of choosing a representative by majority? I put it to members from the country, as a matter of fairness and justice to those who are unable to go to town meetings from day to day, if they should be dragooned into any measure, which will, in the end, put the power of administering political affairs into the hands of those few who can thus afford to go when the others cannot? That is the whole of it. Those who have the most money, those who have the best wind—to use a race-course expression—and the most bottom, will choose their men at last; for they can attend the election after the poor man has been obliged to stay at home, to earn bread for his wife and children. That is what I understand the proposition to be.

Now, I do not know to which party I belong here—whether I am a conservative or a radical. I thought I was a conservative—I was always taught that I was a conservative—but since my friend from Lowell, whom I have known so long,

claims to be a conservative, I think it is very possible that I have been driven to the other side. If a desire that my fellow-citizens should be allowed to exercise their rights and to be represented, is radical, then I am a radical. If being driven from the position that but a small part of the seven hundred voters in my town should be allowed to choose a representative is radical, then I am a radical as opposed to that position. Look at the last election in the district in which I live, or in any of the congressional districts in which there were elections last fall; and I say, Sir,—I believe that I cannot be mistaken,—that the representatives to congress who were chosen by pluralities at that election, were chosen by a smaller vote than the minority candidate had at the first election. I believe that to be true; I am not quite so sure how it was in my own district, where Mr. Sabine was chosen; but I am very sure that it was so in the adjoining district, where another gentleman was chosen whom I will not name. Gentlemen will find that just in proportion to the number of elections, just in that ratio does the number of voters diminish; because a majority of the people of the Commonwealth who exercise the right of suffrage cannot afford to go to the polls and vote day after day; and that is the reason why I oppose the amendment of my friend from Natick. I trust that no such amendment will pass. The same reason which he urges in favor of the amendment, as it seems to me, applies with double force against it. He says that if you adopt the plurality principle in these towns, there may be a desire to concentrate against the plurality candidate, and so they will vote not to send. I say it is better that they should have no representative, than that, because they are unable to send a man to represent them properly, they should be misrepresented by a representative upon this floor. These are, briefly, the views which I have entertained in regard to this matter. I did not propose to occupy the time of the Convention as I have done; but I have a very strong feeling and belief, that the principles which I have enunciated are the true principles which should govern the elections in this Commonwealth.

Mr. DAVIS, of Plymouth. I am very glad, Sir, that the gentleman from Natick has seen fit to move any amendment which will shape, or which will have the tendency to shape, the Report of the Committee. I agree with what has been said by the gentleman from Lowell, that I see no rule—I see no principle—I see no compromise in the Report of the Committee; and I have not yet seen that the chairman of the Committee which made that Report, has evinced any desire to recommend it farther than by thus offering it to this Convention. He has not defended it, nor is he present here to take charge of it; and certainly, if the Convention will read the preface to the Report, I think they will perceive that he has given no reasons there which will recommend it to this body. I am glad, Mr. President, that this amendment has been offered by the gentleman from Natick, because it is, in some degree, like that which was offered in Committee of the Whole, yesterday, by myself; and I certainly do not care which amendment prevails, if either of them has any tendency to prevent the election of town officers by plurality; because I regard them as substantially the same. I rise, at this time, to state one reason why the plurality system should not prevail in any election—more especially in town elections and in the elections of representatives—and it is a reason which I have not seen or heard stated. It is more particularly applicable to town and city elections. It seems to me that elections by plurality, for town officers and town representatives, would be the means of introducing a political demoralization here, which the experience of other States has shown us almost necessarily follows in town and municipal affairs. I ask gentlemen of this Convention whether they believe that if the majority system had prevailed in the city of New York, the country and the world would have seen that spectacle of corruption in the aldermen of the city of New York, which has now become a matter of history!

I believe that plurality in elections for representatives, as well as for town officers, tends directly to that end; and moreover, that if any local object is to be gained, if any particular private speculation is in view, in a town or city; if a street is to be cut in a certain direction, or a new one laid out through some man's land, or any other particular object is to be attained, all that they have to do is to get a caucus; and while the more silent, honest, but careless voters are slumbering in security at home, or are divided upon other matters, this caucus nomination is brought out under the guise of party, and before the majority of the citizens are aware, by the vigilance and activity of men intent upon a private purpose, they carry their election under the plurality system. It was for that reason,—a reason I did not state before, because I supposed it was the sense of the Convention that, without debate, many parts of the Report of the Committee would be rejected,—that I offered this amendment.

Mr. BRIGGS, of Pittsfield. It has been said that politics makes strange bed-fellows, and I

believe that Conventions do also. But a little while ago I found myself voting point blank against the gentleman from Natick, (Mr. Wilson,) and, I believe, the gentleman from Lowell, over the way. Now, Sir, I find myself in their ranks, an humble supporter of the proposition of the gentleman from Natick, although I could wish that he would modify it a little. I have made inquiry, a great many times, of gentlemen who, I suppose, would know something about it, how it happens that that provision came into the Constitution that the towns were obliged to elect their representatives in one of four days,—first on regular election day, then at two adjournments, and then on the fourth Monday in November,—and I must say that I have never yet had a sufficient reason assigned. The gentleman from Framingham has given, perhaps, as good a reason as can be given, which is, that it is not advisable that the people should be called together too frequently for the purpose of voting. That, however, is not a satisfactory reason to me. I should prefer to adopt the system of permitting the people to hold meetings as long as they pleased for election purposes, even if they did not succeed, down to the very day of the adjournment of the legislature. I would carry out what we have carried out here. I see before me the respected gentleman who succeeds our lamented colleague, whom we last week put into the grave, who takes his seat on the second day of the week during which the Convention have declared that we should close our labors. Is there any objection to that? None whatever. Would there have been any objection to it if the people had seen fit to have voted on the matter ten times? None whatever. And, Sir, if you will not give the people such a Constitution as will permit them to elect their officers on the first ballot, what earthly reason can be assigned why they should not be allowed to try until they can come to a final determination, and elect a man according to their own mind? I would not provide that they should not adjourn for a longer period than six days. I see no necessity for any provision of that kind. Leave the matter to the people of the towns. Let them adjourn for as short a time, or as long a time, as they please. Leave it to them; and then I would adopt a provision in the Constitution to the effect that the towns which are entitled to representation, and which have not chosen a representative, may send a man to the legislature any day previous to the last day of the session. I shall, however, vote for the proposition as it is.

One word more, Mr. President. Gentlemen complain of the Report of the Committee. Why in the world should they? They say that it contains no principle. Why, Sir, does it not contain all principles? [Laughter.] Who is there that ought not to be satisfied with it? Do you want an election by a majority? Governor, lieutenant-governor, treasurer, attorney-general, and auditor, must be elected by the good old-fashioned method of a majority—of what? Why, Sir, they must come up here and be elected by representatives chosen by one-third of the people. [Laughter.] Can any majority man be dissatisfied with that? Do you want a plurality? Your plurality men—of whom I have the honor to be one—why, Sir, your senate is to be elected by a clean plurality, and so are your county officers. Do you want both principles? Look at your town representatives, and your municipal elections. Do you want a majority system? There you have it, and if you cannot elect upon that system, then you have the privilege of trying the plurality plan; and yet, here we are, grumbling at this Report—a Report which furnishes individuals everything they want in that line, as far as it goes. Now, it seems to me, that we are making a mistake. I say, with all respect to the Convention—I know we have no right to talk to them, but I know, also, that they are civil gentlemen, and they will bear with me—I say, I believe at this moment, that the great people of the State of Massachusetts, are looking up to this House for the adoption of the plurality system. I may be mistaken; if I am, I am mistaken; but that is my opinion. As to the majority system, have they not felt the inconvenience of it, year after year; and have not members of different parties, on different occasions, advocated the plurality system? And are there not numbers of gentlemen,—I say it with all respect; I do not intend it, as my friend from Boston, (Mr. Hillard,) would say, as a "fling,"—are there not gentlemen, whose ears listen to me, that came here strong plurality men, who have abandoned that notion, and has it not been assigned by some, as a reason for abandoning it, that the Whigs have come up here in one solid phalanx in favor of it? And is that a sufficient reason? Mr. President: with some gentlemen I have no doubt that that reason is all-sufficient. If the people want it, is there any danger in adopting it? And, if they do not want it, no man ought to go for it; and, as far as I know, those who coöperate with me in political affairs out of the Convention, at home, and who have expressed their opinions honestly, have entertained this opinion, though they may have changed that opinion, as all honest men will do when they see sufficient reason for doing so.

I say, Sir, without occupying more of the time of the Convention, that I seriously wish gentlemen would attend to the arguments that have been presented to them, not on this side of the House, but from their own friends. I wish they would come forward and answer the arguments of my friend for Manchester, (Mr. Dana,) on this subject, or carry out those principles which but three hours ago were so strongly shown to be the sense of the Convention. This is certainly an important subject; one which strikes deeply at our political rights, and which will have an important effect upon those rights for years to come. I would wish that this question should be met and decided upon its merits, and that we should carry out fully and fairly, and clearly and plainly, what I believe to be the unmistakable indications of the public wish. But, Sir, if that cannot be done, for one individual, I am disposed to get as near to it as I can; and, with the present aspect of the proposition before the House, I shall support most cordially the proposition of the gentleman from Natick, (Mr. Wilson,) though I wish he would present it in a somewhat modified form.

Mr. KEYES, for Abington. I should not have risen to say another word to the Convention, on this subject, had it not been for the fact, that it has been mentioned, several times, that the chairman of the Committee which reported these resolutions, is absent, and that absence been construed as being intentional on his part. And, as I had as much to do with that Report as he had, and as it has been assailed as having no principle, and it having been asserted, again and again, that no good reasons can be assigned for the several points it embraces, I wish to say a word or two in its defence.

The gentleman from Plymouth (Mr. Davis) is opposed to it, because he regards it as a monster, without character, without principle, and without everything else that, in the remotest degree, could recommend it. But, Sir, I immediately saw the reason why he opposed it. He had offered an amendment, similar in its provisions to that which is now pending, as offered by the gentleman from Natick, (Mr. Wilson,) and which was rejected by the Committee of the Whole. That is a sufficient reason for his opposition.

Then, the gentleman from Lowell (Mr. Adams) is similarly situated. He made a very proper speech, in favor of the majority system—and I am sorry that we had not many speeches of the same kind—a long time ago. But it is too late to make them now. There has been a great deal said here about "principle;" but it strikes me, Mr. President, that there is very little principle in the whole matter. Now, Sir, here is a complete compromise; not like the compromises we hear of in some other parts of the country, which contain matter which nobody can adopt; and, Sir, I contend that there is a good reason for every one of these propositions. What were the complaints before? They were not made on the ground of principle, at all. There is not a man on the floor of this hall, who would wish to say, before the people, that the majority principle is not the only and the proper principle that ought to be adopted; and the moment you depart from it, you lessen the government, and degrade it, in every sense of the word. And, as I said before, the only principle about it is, on the ground of inconvenience, and its only effect to destroy one party and permit another party to rise into power.

Now, Sir, I say that we had evidently abandoned the idea of coming to any decision on the ground of any distinct and positive principle; and that was the reason why the Committee went out to see if we could not devise some plan on which we could harmonize. In the early part of the day, I explained briefly some of the reasons which had operated upon the Committee, and some of the advantages which would result from the adoption of the Report. In regard to the town system, every-body knows that it extends the privileges of the people to give them more than one ballot. Why do they wish it? It is for their own satisfaction and convenience. When they cannot agree upon the caucus nominations, they can have a second choice—a choice emphatically of their own, without the intervention of a caucus; and there is, therefore, no inconvenience in the arrangement, so far as it regards the towns. If they say: "Let us decide upon the matter to-day," they will do so; and, after having voted once and come to no decision, they may have twenty candidates if they please. Here, then, in these propositions, there is a fair compromise on both sides.

Now, it was said by the gentleman from Natick, that if the people, at a town meeting, could not agree on a candidate, they could agree to adjourn; and that, therefore, the majority would rule. But, Sir, it is not so. The polls are open at nine o'clock, and there are no majorities there to adjourn on this system; and they will go on and take a vote, and after they have made a count, and decided that they will have no election, then the majority rules.

The gentleman from Lowell, said that the House of Representatives, by this plan, may be elected by a third party, in Massachusetts. Why, Sir, the moon *may* be made of green cheese, for anything I know. A great many things, *may*

be; but may bees do not fly in July or August. We all know that all this talk about inequalities in representation, is humbug, from beginning to end. It is all absurdity, and reminds me of a conversation I had with a gentleman from Boston, the other day, who told me, with a long countenance, that this inequality was perfectly awful. I asked him if it had ever occurred to him, that during the last ten years, he had exercised sixty-six times more power in the legislature than I had; and that while that was the case he had never thought there was any necessity for a change in the Constitution? I told him that I lived in a town having 4,500 inhabitants, electing one representative every year; that I voted for one representative every year, while he voted for forty-four representatives; that he elected one representative for every 3,100 of the population of Boston, and I one for 4,500; and that he had sixty-six times more power in the legislature, than I had; and yet he had lived under the system for ten long years, and said that all was equal enough, and answered every-body's purpose well enough. There was no ruin and destruction, under that system. The country towns, Sir, are to be opposed to each other always. Why, Sir, if you had a decent party, here in Boston, one half of the country towns would go for you. [Laughter.] Therefore, these towns are divided against each other, and this vast accumulation of power in the country is just as much for the benefit of cities, as for anybody else, and they can calculate upon it if they only behave themselves.

Now, as I said before, I felt in duty bound to go for the Report, because I thought it was made to meet the wishes of the members of this Convention, a wish expressed by a previous vote. It has not given everything to one side, and kept everything from the other, but has divided the spoils. But now that gentlemen see fit not to accept of it, the obligation I felt under to support it, is removed from me. I do not care whether any more of it be adopted, or not; and I will simply say, in defence of this Report, that it answers the purpose for which the Committee were sent out to make it. It answers that purpose as completely and as fully, as any report, made by anybody possibly could. It is a compromise, and a fair one, giving to each party what belongs to each, and there is good reason for each paragraph in it.

Mr. SCHOULER, of Boston. The gentleman from Pittsfield, (Mr. Briggs,) has said that politics make us acquainted with strange bed-fellows, but that is not half so strange as the speech just made by the gentleman who represents Abington, (Mr. Keyes,) for there is no man in this State, I might, perhaps, say there is no man in the United States, who has spoken more frequently, and more bitterly against all kinds of compromise than that gentleman; and yet he comes forward here in this Convention, finding that the chairman of the Committee shirks from the responsibility, and takes upon himself the responsibility of advocating this compromise Report.

Mr. WILSON, of Natick. Will the gentleman from Boston allow me a word of explanation?

Mr. SCHOULER. Most certainly I will.

Mr. WILSON. My friend from Boston has made a remark which I am sure is unjust, and which he will consider so, when he ascertains the facts. The gentleman from Lowell, (Mr. Butler,) to whom he referred as shirking the responsibility of this Report, was compelled, by death in his brother's family, to be absent this afternoon. Justice to him requires that I should make this explanation.

Mr. SCHOULER. That is a matter which I did not know. But the gentleman from Lowell was here yesterday all day, and also has been here to-day during the whole discussion until this afternoon, and he has not put forth any defence of this Report. But the gentleman for Abington, (Mr. Keyes,) takes up the gauntlet; a gentleman who has been opposed to all kinds of compromises—who has stood upon the pinnacle of principle, has become the advocate, *par excellence*, of compromise. And what has he made out of it? He said it was the compromise for which this Committee was sent out of the Convention to make. Who ordered them to make it? Where was it made? In coffee-houses, and pot-houses.

Mr. KEYES. I desire to ask the gentleman whether, from his own experience in going to coffee-houses and pot-houses to make compromises, he judges that this Report came from the same place? [Laughter.]

Mr. SCHOULER. I did not mean anything personal by my remarks, and I am sorry that the gentleman should suppose I did. When I spoke of coffee-house and pot-houses, I did not intend any personal reflections upon the gentleman who represents Abington; but I have heard, and other people have heard, that the compromise for the basis of representation which was brought into this House, was concocted over a dinner-table down near a certain coffee-house. That the gentleman will not deny, because if he does, I can prove it. [Laughter.]

Mr. KEYES. I do not know how far my opinions may have accorded with others who have considered and talked over this matter, everywhere, almost; but, Sir, this entire Report of the Committee, with the exception of one single

paragraph, was prepared by myself at home, and submitted by me to the Committee. I have not dined in any coffee-house, or any restaurant during the whole session, and have been at no dinner, or public display of any character, except once, and then I spent five minutes in a caucus, where I saw nothing but a lamp upon the table. [Laughter.]

Mr. SCHOULER. It was the remark of an English poet, "may not a man have a house in his own inn." I supposed that the gentleman who signed the Report was the concoctor of it, and he is the gentleman who represents Lowell, (Mr. Butler).

Mr. KEYES. I will state that the principles of this Report were adopted mainly during the absence of that gentleman. Being afterwards submitted to him, he agreed to them, and signed his name to the Report.

Mr. SCHOULER. All I judged from, was the signature of the Report, and that is the signature of the gentleman from Lowell, and I presumed he was the chairman of the Committee, for he made the first speech to explain the Report; but now it appears that the gentleman from Abington, (Mr. Keyes,) is not only the defender of the compromise, but the author of the compromise. He has brought in an omnibus bill, and asks us to go for it. It is a bill which he cannot even get his own friends to support. I dislike omnibuses, any way. It was said yesterday, it has been said to-day, and it will be said hereafter, and it cannot be denied—and, as the gentleman from Lowell, (Mr. Abbott,) who spoke this afternoon, well put it, it cannot be winked out of sight, and it wont go if you do wink it out—that, by this basis of representation, one-third of the people of Massachusetts, can have a majority in this House. That is the point which the gentleman from Lowell, (Mr. Abbott,) put to the Convention this afternoon, and the fact cannot be gainsayed, however much we may talk about compromises, however much we may try to enlist the sympathies of this body by calling this a compromise.

I am opposed to the amendment proposed by the gentleman from Natick. I go for the representation of our towns, and of our cities; and I go for that, because I think every man, woman, and child in Massachusetts, should always be represented in the legislature; and that they should be the makers of the laws. If we adopt the amendment proposed by the gentleman from Natick, we will have the great difficulty and the great objection which lies against the present Constitution, for it leaves the Constitution, in that respect, precisely where it now is.

The gentleman from North Brookfield, (Mr. Walker,) in speaking yesterday, said it is no great inconvenience if a hundred towns are left out of the legislature. Now, Sir, I take issue with him upon that point. I say, there is an inconvenience and a wrong about it, which no compromise and no speech can overcome; because these people, not represented in the legislature, are still bound to obey the laws which other people make for them. It was to get rid of this town representation of small towns, and parts of the Commonwealth, which we came here principally, among other things, to perform; and, by the district system, we would have obviated the evils to which I refer.

The gentleman from Natick, and others who have discussed this question, have not looked at it outside of the small towns. He gives the small towns the right to vote two or three times every day, from the first Monday of November up to the time of the assembling of the legislature. Although we have cut down the representation of the cities unequally with that of the towns, still this makes the inequality still greater, because in the cities we cannot have elections every day. When we once get together for that purpose, we have to remain, for the mayor and aldermen cannot adjourn the meetings in the cities, as can be done in the towns. You may vote five or six times in the small towns, but you cannot do it in the cities; and, as the Constitution now stands, I do not see how we can obviate it at all. We can have but two elections—one, the annual election, and the other on the fourth Monday of November. I say this is not fair; because it gives to one part of the Commonwealth the right to try to elect a number of times, and allows the cities to try only twice.

But, the farther we go into the consideration of this matter, the more we see the difficulties. There are but two courses to pursue, and, as long as we keep to the principle of either, we keep in a straight line. I can see why some should travel in one line, and prefer the majority rule, and why others should pursue the other, and prefer the plurality principle. If gentlemen are in favor of the majority rule, say so, and stick to it. If they are in favor of the minority principle, stick to that, without compromise, and then we shall have a Constitution which is plain. If we adopt either the one course or the other, the people will know what it is, and it will operate equally throughout the State. The more we discuss this matter, the greater will be seen to be the difficulty of any attempt to compromise a principle; to attempt to put into the fundamental law of the Commonwealth, a provision which has no prin-

ciple whatever in it, and never was intended to have any principle in it. I trust, that as the representatives of the people, we shall see the necessity, when we are framing an organic law, of founding it upon principle. Unless we do so, it will not stand. All expediency, all compromise, seeks something beside principle, and will fall. I trust we will throw overboard this whole compromise platform, upset the omnibus, and adopt a principle, and stand by it through and through.

I do not wish to consume the time of the Convention. I rose merely for the purpose of showing the absurd position in which the gentleman for Abington (Mr. Keyes) places himself, and from which I do not see that he will be able to extricate himself.

Mr. HATHAWAY, of Freetown. I am always extremely anxious to know precisely what I am called to vote upon, and I ask the indulgence of the Convention for a moment, upon this matter. In this part of the House there are various opinions as to the provision of the amendment of the gentleman from Natick, (Mr. Wilson). My friend from Boston, (Mr. Schouler,) says it contains the majority principle, and so I understand the gentleman from Natick to say; but if I understand the proposition, it is this, and nothing more: That upon the failure of an election of representatives, town meetings may be adjourned, from time to time, until an election shall be had. I do not pretend to give the precise language of the amendment, but that is the substance of it. I ask the gentleman from Natick where, in his amendment, he finds the majority of all the voters in an election required to effect an election, and wherein does it differ from the provisions of our present Constitution? Where is there any provision in his amendment to prevent the legislature, the very first day of their session, in January next, from passing a law, providing that thereafter a plurality may or shall elect? What violation would there be in that, of any principle or provision which he has incorporated in his proposition? If I am wrong in reference to this matter, I should like to be now corrected.

In consequence of the Convention, the other day, refusing to have a proposition read so that the Convention might understand it, and believing that all the Convention did not understand the precise proposition contained in this amendment, a few moments since I went to the Chair, and reëxamined it, and I found my impression true, that there was nothing in it to prevent the legislature from saying that a plurality may or shall elect. My friend from Worcester, (Mr. Allen,) suggests to me there is nothing in the present Constitution which requires that a majority of votes shall be required for an election of a representative. I agree with him, and I can find nothing in the Constitution which would have prevented, in times past—from 1780 up to the present moment—the legislature from providing, by law, that a plurality might elect; and the same difficulty, it seems to me, is involved in the proposition of the gentleman from Natick, if he intended to require a majority of all the electors to effect an election. In order that the Convention may understand the matter, and not be misled—which I do not believe the gentleman from Natick designed should be the case—I call for the reading of the amendment.

Mr. HILLARD, of Boston. I think this Report, when we take it in connection with its parents and its pedigree, is rather a singular document. In this Convention, I, in common with the minority party, am only a passenger on board ship, not responsible for the course of navigation; but, from some symptoms that develop themselves, there seems to be a likelihood of a mutiny in the forecastle, in which case, we may be able to get a look at the log-book, and learn where we are, and where we are going.

As to the majority and plurality rules, I assent, substantially, to the views of the delegate for Manchester, (Mr. Dana). The plurality rule, it seems to me, ought to be applied to the election of the governor and all officers chosen by the general action of the whole State, but not to the election of town officers, or representatives. This is just reversing the application of the Report before us. That document reminds me of the horse advertised for a show, that had his head where his tail ought to be. But we are told that as we cannot have the whole of the principle, we must be content with what we can get. The gentleman for Abington (Mr. Keyes) was, in my judgment, right, in the doctrines he just now laid down and defended, with his usual courage and frankness. He said the Report did not pretend to push one principle to its extreme, but that it was a compromise; a compromise of principles. So far, so good. But I never expected to live to see the day when the gentleman for Abington, (Mr. Keyes,) and the gentleman from Natick, (Mr. Wilson,) would talk so glibly of compromises. Especially should I have thought that the word would have stuck in the throat of the latter gentleman, like Macbeth's "Amen." Perhaps he has been denouncing compromises so long, that he has learned to speak the word easily. It is only on this supposition, that I can account for its having been spoken so trippingly on the tongue, as it was just now.

I am one of those unprincipled men who be-

lieve, and always have believed in the necessity of compromises. My household consists of two persons, and I find I cannot govern it without daily compromises; [laughter;] and as to undertaking to govern a community of a million of souls, without compromises, it is just as impracticable as it would be to pass from one point to another without passing through the intermediate points. I go for compromise in this matter; but, as I said before, I would have transposed the rules, adopting that of plurality for the governor and other State officers; but not extending it to town meetings.

I spoke a moment or two ago of symptoms of mutiny in the forecastle. So far as we can learn from what we can hear through the bulkheads——

Mr. KEYES, for Abington, (interrupting). I am not very particular, generally, about what place is assigned me by gentlemen; but in this instance, I beg that the gentleman from Boston will say cabin, or quarter-deck, and not forecastle.

Mr. HILLARD, (resuming). Well, Sir, from whatever part of the ship the voice comes, we learn from it that the Committee were moved by the wish to keep political power in the hands of the party which now enjoys it. The line of legitimate succession was not to be broken. This is a legitimate motive for political conduct, and I think the better of the gentleman for Abington for his frank avowal of it. We all feel this; we all act upon it; but we do not often speak it out so openly. There are but two houses in this world, Sancho Panza says, the house of Have, and the house of Want. Just now, it is my house that wants, and his house that has. I profess to be a party man; and I hold that the preservation of party organization and the maintenance of party ascendency are motives upon which all party men must of necessity act, to a certain extent.

Now, as to the amendment of the gentleman from Natick, (Mr. Wilson,) so far as I understand it, I am ready to go for it. But I admit that I have no claim to speak upon this subject with any authority, for I have not been in a town meeting since I was twelve or fourteen years old. For this reason, I am ready to admit that the testimony of the gentleman from Framingham, (Mr. Train,) is much more important than any I, who have lived in a city all my life, am able to bring. But so far as I am able to judge, hold, that in town meetings, the rule of the majority should always be applied strictly and exclusively. I would keep out of the town meetings the plurality principle, and under no circumstances, nor for any considerations, would I allow it to intrude here. The town meeting is a pure democracy; and as I hold to the government of the majority, so far as it is practicable, as an essentially democratic principle—as this is the very breath of the nostrils of democracy, I would not introduce any principle at variance with it into these primitive democracies. And, Sir, I do not believe that in the long run, the application of the majority principle here will occasion any serious inconvenience; because, the elements which make the application of the plurality rule necessary in many cases, cannot apply in small towns, or in towns of moderate size, because I assume that you cannot have three parties acting separately—and I wish to be understood as making the remark generally, without reference to the present state of things. I say, you cannot have three parties acting separately, unless there are prizes or objects of some considerable importance to be struggled for; and I do not think that any offices or favors that are to be distributed or given out in the town meeting, are of sufficient consequence to produce that result. The natural tendency in our communities is for men to arrange themselves under the banners of one of two parties. The worst that could happen would be, that a certain number of towns would go unrepresented. This would be no public or general misfortune. It would be an inconvenience to the particular constituency not represented, and no more. In plain English, it would be nobody's business but theirs.

Mr. WHITNEY, of Conway. I have a strong desire to say a few words, before a final vote is had upon this subject. Gentlemen from different sides of the House have attacked this Report, it seems to me, without a reasonable consideration of its merits. Some gentlemen tell us there is no principle involved in this whole matter; that we are only discussing the adoption of a rule for governmental action. Others urge that the embodiment of true republican principle lies in the plurality rule alone; while others claim that any departure from a positive majority, is a departure from the true democratic faith. Now, Sir, from what I heard in our previous discussions upon this subject, I had been led to believe that every member of this Convention concurred in the opinion, that the first principle upon which all our civil institutions were established, was, that a majority of the people were only entitled to rule; that sovereignty was acknowledged to reside only in the expressed will of a majority of the whole people. I did suppose that upon this, as a principle, we were all agreed; that we had agreed that this was the principle upon which the Constitution of 1780 was founded; and that this was the principle upon which our present Constitution now rested, as an established fundamental doctrine; and that under the present Consti-

tution, this idea was intended to be carried out in all our elections; but it is true, in the present Constitution, in case the majority of the people fail to elect the governor of the Commonwealth, then the people delegate their authority to their agents. Let us see what the Constitution now says:—

"But if no person shall have a majority of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the Senate of the two persons so elected; on which, the Senate shall proceed, by ballot, to elect one, who shall be declared governor."

Gentlemen speak of a great departure in this Report, from the majority principle, as recognized in our present Constitution, in this respect. Why, Sir, the Report is precisely the principle of the present Constitution. It is an embodiment of the same idea precisely, although the language is somewhat changed. You have provided, by this Report, that certain officers now elected by the legislature shall be elected by the people, if they can elect them by a majority of their votes, but if they cannot so elect them, then you provide that they shall be elected by the legislature, the same as under the present Constitution. Well, Sir, no evil can grow out of this amendment, if our present Constitution is right, certainly, for in one case these officers are elected by a majority of the people, and in the other they are to be elected by the same number, or otherwise precisely as we now elect them; in this particular, this Report coincides precisely with the method recognized in the old Constitution. Now, Sir, is that principle a correct one, as it stands in the old Constitution? If it is, then that upon which the Report of your Committee rests is also correct, for it is identically the same thing. And when gentlemen object to the Report because it is a departure from the majority principle, they object to our present Constitution—which in the minds of some gentlemen is perfect. We agree that it is a departure, to some extent. We have departed in the election of officers to be voted for by the whole people of the State, only so far as has been demonstrated that a departure was necessary, and no farther. We abide by the old Constitution in the main, in the election of State officers.

But other gentlemen say there should be a departure, *in toto*—that the plurality is the principle. Well, Sir, be it so, for the purposes of the argument. Suppose it is the principle, have we not accommodated these gentlemen in this Report, in a measure? Have we not adopted the plurality in every case where a political necessity can be shown to exist? I take it the people have no attachment to the rule of a less number than a majority, as a principle. They consent to the rule of a lesser number than a positive majority, as a political necessity, growing out of the multiplicity of parties. This Report adopts the plurality system of the election of all the officers except those which are now elected by the legislature. It leaves these officers to be elected by a majority of the people, if a majority can elect. Now, where is the great departure from principle in this Report, which gentlemen talk so much about, and say has been concocted in a pot-house, eating-house, or somewhere else?

But the gentleman from Natick, (Mr. Wilson,) objects to it, because it gives the plurality system in the choice of representatives; and says, sooner than choose by plurality, towns will go unrepresented, and vote not to send. Now, I submit to that gentleman, if in his sober judgment, he believes the towns will be less likely to send representatives under this third resolution, giving the plurality choice upon the second ballot, than they will under the present system? I put it to every member of the Convention, if the towns will not, in nine cases out of ten, be less likely to return full delegations under the system proposed by the gentleman from Natick, than under that proposed in the Report of the Committee? It is not because the towns do not want to be represented, that they do not send their full quota of representatives. They like to be represented, but every man is attached to his own party, and dislikes to give up in favor of another party; they also dislike these repeated elections, and therefore they allow themselves to go unrepresented; and perceiving no prospect of a choice, they vote not to send. I think there is no weight in the objection of the gentleman from Natick.

The gentleman for Abington, (Mr. Keyes,) has well answered the argument of the gentleman, that a third part of the people of the Commonwealth, from the small towns, will choose the governor. The case has never arisen, and never will arise, when all the small towns will array themselves on one side, and all the large towns upon the other. There always will be some of the small towns which will sympathize with the large ones, and there always will be some of the large towns that will sympathize with the other small towns; and the case, therefore, will never arise where a portion of the House of Representatives, representing only a third part of the people, will choose the governor. Under this resolution, if adopted in your Constitution, I verily believe you will always have your governor

chosen; if not by a majority of the people themselves, by the representatives of a majority of the entire people of the Commonwealth. And how is the case where the majority rule is applied exclusively? Why your governor has often been chosen by a minority during the last eight years. Where there are third parties, there always will be vacancies under the majority rule. And under that rule, a small majority, by possibility, may choose your governor. And I therefore think that this argument, as applied to the Report of this Committee, is entitled to no weight at all.

The gentleman from Framingham (Mr. Train) said that this Report would furnish an opportunity for "truck and dicker." Now, Sir, I say that if there be any such opportunity furnished anywhere, it cannot be charged upon this Report, or upon this Convention, should it adopt this Report; because in these particulars it copies the present Constitution; and therefore the majority of this Convention can in no sense be charged—by those who have opposed all alterations in the Constitution—when they leave the Constitution as it is, with having furnished opportunities for "truck and dicker." It is chargeable upon the present Constitution entirely, and not upon the Report now before us. Your present Constitution makes the same provision, so far as elections by the legislature is concerned; and the fault, if fault there be, rests upon that, and not upon us. The people have not complained, so far as I know, of the present mode of choosing governor; they have made no call upon us to change the present mode of choosing their State officers. In fact, I am not aware that any fault has been found with it; and therefore, I take it that the argument, so far as relates to alterations of the Constitution for choice by the legislature in case of failure to elect by majority our State officers, is, in this particular, groundless, with regard to the election of representatives, and other officers that the people must elect, if elected at all.

Every gentleman knows the effect upon communities, of frequent elections, where they are continued day after day; where neighbor is arrayed against neighbor, and friend against friend; ill-feeling is often engendered, ill-blood is produced, discord and strife provoked, all of which tend to degrade your electors, and bring them into disrepute, and thus drive the better portion of the people away from the exercise of the sacred right, and high privilege of self-government.

Now, Sir, if you want to make the people love and respect their government, let the people have an opportunity, at the ballot-box, to elect by a practicable number of their votes; and in case of their failure to elect by a majority, let a plurality suffice, in the election of members of the legislature; and let that legislature be chosen by the people, without engendering that ill-feeling and party animosity which is the certain result of frequent elections. But to return to the matter of "truck and dicker." I hold that, as to this matter, the Report of the Committee leaves it precisely where the present Constitution leaves it, with the exception that where the present Constitution allows the House of Representatives four candidates to "truck and dicker" upon, four persons to be voted for, this Report furnishes only three; therefore, I undertake to say that this Report has lessened the number of chances to "truck and dicker," and to that extent it has removed the objection.

Now, Sir, I think the repeated trials to elect, to which the people are subjected under a majority rule, is what the people of this Commonwealth wish to change in the Constitution. They look upon the plurality rule as a necessity in some cases; and they wish to adopt this rule only so far as a necessity exists, retaining the great principle established by our fathers: that in a majority, the only acknowledged sovereignty resides in an organic law, wherever it can be preserved consistently with the practical convenience of the great body of the people. And I think we ought to transmit to our posterity this great principle in our constitutional law.

I intend to vote for the Report of that Committee, as I cannot see any great objection to it, or that departure from principle which gentlemen have endeavored to make out. It provides that every elective officer, excepting such as are elected by the legislature, shall be elected under the plurality rule. If the gentleman from Boston, (Mr. Schouler,) favors the plurality rule, why does he not favor the Report of this Committee?

Mr. SCHOULER. I did not object to this part of the Report, but the other portion of it.

Mr. WHITNEY. I beg pardon of the gentleman. I am happy to hear that he is intending to support the Report of the Committee. I would much prefer, in the case of representatives to the general court, to have had a plurality upon the first choice. In the terms of the Committee, generally, it is true, there is an opportunity to ballot twice upon the same day, and there may be something gained by a second ballot. If men come together, and a caucus nomination is not acceptable to the sober judgment of the people of the town, they will repudiate that caucus nomination on the second ballot. They will once vote, and thus get an honest expression of sentiment upon the first ballot, as to who is the best man to rep-

resent them, and after having obtained that expression of opinion by this method, the Constitution will allow them to change the mode of election, if they fail to make choice by majority, to that of plurality. I think that such a plan will not work any great inconvenience to the people. I go for the majority rule as a principle; but I say we cannot abide by it, and as the gentleman for Manchester, (Mr. Dana,) said, in another matter the other day, we cannot carry theories always into practical demonstration in our government. We cannot abide strictly and legitimately by theories, and the theory which I take to be right here is the government of the majority. We depart from it in this case only so far as our convenience compels us to do so, and we give the people the opportunity to prevent any snap judgment, as the gentleman from Pittsfield, (Mr. Briggs,) calls it, by a speedy vote. We will require a majority the first time. I believe the people all over the Commonwealth are looking to this Convention to lighten their burdens in reference to repeated elections. I hope this Convention will stand by the Report of the Committee, and, for one, I design to vote against the amendment of the gentleman from Natick, (Mr. Wilson,) for I think it has produced confusion, and will, if adopted, leave this matter in a worse state than it was before. I intend to vote for the plurality in every case where the people are liable to be called together the second time, for an election; and in every case where the Constitution provides that they shall now be chosen by the legislature, I propose to let the Constitution remain as it is, only giving the opportunity to the people to elect by majority, if they will, if not, let State officers remain where they now are in the Constitution. By so doing, I see no great departure from principle. I think that upon a reëxamination of the Report of the Committee, gentlemen will not find it such a monstrosity as it has here been, by some gentlemen, represented to be. I shall abide by the Report of the Committee exactly as it came from their hands.

The question was then taken on Mr. Wilson's amendment, and there were—ayes, 59; noes, 145.

So the amendment was rejected.

Mr. ALLEN, of Worcester. I move to amend by striking out the third resolution entirely. I will not multiply words at this hour of the day. Striking out the third resolve, will leave the Constitution where we found it, and surely that must be a very good condition of things, and a wise provision of the present Constitution, when gentlemen, upon all hands find it so difficult to change it. Upon this question of plurality or majority, gentlemen have changed their opinions from day to day; not only single individuals, but bodies of men. My friend from Pittsfield, (Mr. Briggs,) and those with whom he associates, have acknowledged the changes which have been wrought in their minds, and, indeed, so rapidly have they been, that my head grows dizzy when I think about them. I was gratified with the course of the conservative members of this Convention in this one particular. I would not preserve the rust which remains in the Constitution; but, as there is great diversity of opinion in respect to any modification of one of its substantial propositions, I propose that we leave the Constitution, in regard to representation, just where we found it. I have not heard any great complaint, only in respect to the election of representatives. I believe that the practice which is allowed for the purpose of a choice, three days in November, and one in December, is amply sufficient on all ordinary occasions. I believe no serious difficulty has been found in this matter in the towns of the Commonwealth, when we had two parties, and none even when the Commonwealth has been divided into three. It was necessary to introduce another element, but I apprehend it will soon be removed from the political affairs of the Commonwealth, and we shall find that we shall go on hereafter, as we have heretofore, quite comfortably and conveniently, so far as respects the manner of choosing representatives, and the principles which will govern them, under the Constitution as it now stands. Differing in almost everything which has been proposed, let us unite in this matter, and retain that provision of the Constitution to which I have alluded, which has existed so long.

Mr. FROTHINGHAM. I shall go for as much of the plurality principle, as I can get; for I believe there is a demand upon the part of the people for it, and its adoption would save time and expense, and certainly party feeling. We have taken the vote upon this question several times. Yesterday, the gentleman from Plymouth, (Mr. Davis,) moved an amendment, the effect of which was to strike out this plurality rule after the first choice. Then, this afternoon the gentleman from Natick, (Mr. Wilson,) to my great regret, moved an amendment, which amounted to the same thing. Now, we have another amendment moved by the gentleman from Worcester, (Mr. Allen). All of these amendments would have the tendency of destroying the plurality rule, for the choice of representatives. I have nothing more to say, at this time, but I appeal to members of the Convention to stand fast by this rule, for the election of members to the House of Representatives; for it will be sure, notwithstand-

ing what has been said by the gentleman from Natick, to cure that great evil—non-representation.

Mr. STETSON. I move the previous question.

Mr. FRENCH, of Berkley. I hope the gentleman from Braintree will withdraw his demand for the previous question, for a moment. I wish to offer the following amendment:—

But in case of the failure of an election on such ballot, then at a subsequent meeting, called for the purpose, the person having the highest number of votes, shall be deemed, and declared to be elected.

I have said a word in regard to this amendment before, and I labored under an entire mistake, when I supposed that the amendment offered by the gentleman from Natick, had for its object, the same effect.

Mr. STETSON. I rise to a question of order, and it is this: I moved the previous question, and I would like to know if debate can go on?

The PRESIDENT. It is not in order for the gentleman from Berkley to discuss the merits of the question.

The previous question was seconded, and the main question ordered.

The PRESIDENT. The first question is upon the amendment offered by the gentleman from Worcester, (Mr. Allen,) to strike out the third section.

The question was taken on the amendment, and it was rejected.

Mr. HOPKINSON, of Boston. I rise to a question of order. I find the first resolution provides, substantially, that the governor, among other officers, in case of a failure of an election by the people, shall be elected in a particular manner pointed out, to wit: that a certain number of candidates shall be voted for by the House of Representatives, that they shall return the persons so elected to the Senate, out of which number the Senate is to make an election. I find by referring to the record of the 30th of May last, that this Convention, by a very large vote, passed upon this subject, and adopted a different provision. The resolve adopted on that day, reads as follows:—

*Resolved*, That it is expedient to alter and amend the Constitution, so as to provide that in case of the failure of an election of governor by the people, he shall be elected by the Senate and House of Representatives, by joint ballot.

I suppose it is a general parliamentary rule, which, if it has not been applied here, has been frequently applied, that when a particular matter has been finally passed upon, a reconsideration may be moved within a certain time; but if that time has passed by, such a reconsideration cannot be moved. It appears to me that this provision is a violation of the rule, as it makes provision for the choice of governor, by another method than that already passed upon and determined by the Convention.

The PRESIDENT. The suggestion as to the question of order amounts to this: that this proposition is inconsistent with another proposition, which has been assented to by the Convention. It, therefore, revolves itself into a question of consistency, and that is a matter for the Convention to decide. The Chair understands the general parliamentary rule to be that where a subject has been disposed of, the same subject cannot be presented again. But, that rule is not invariably adhered to, under the general parliamentary law. It is also provided for by a rule of legislative bodies, as by our House of Representatives, that when a question has been rejected, that question shall not be presented again. But, that is not the case in this instance.

Mr. BRIGGS. I would like to have the resolution which has been heretofore adopted, read.

It was accordingly read.

The PRESIDENT. This is, in the judgment of the Chair, a question of consistency, and not of order, and is so laid down in Jefferson's Manual, which is the standard authority.

Mr. HOPKINSON, of Boston. I would inquire, whether, when a matter has been acted upon, it can be taken up again?

The PRESIDENT. The Chair cannot reply to a question of that general character, but only with reference to this particular case. The decision of the Chair is, that it is not for the Chair to decide, whether this is consistent or inconsistent; it is for the Convention to determine.

Mr. BRADBURY, of Newton. I would ask the Chair, as a question of order, would not this be a matter for discussion, and as this is like a question of order, whether, the previous question being ordered, it will cut off these two contradictory acts of the Convention?

The PRESIDENT. The rule is, that after the previous question has been ordered, the main question shall be taken without debate.

Mr. HILLARD, of Boston. I suppose that the previous action of the Convention has been limited to an expression of opinion, that it is expedient to do so and so; and I take it, that these expressions of opinion will be put into definite shape, and come up for the action of the Convention; and that when so brought before the Convention, and the inconsistencies are point-

ed out, instructions can be given so as to obviate them.

Mr. GRAY, of Boston. I would ask for a division of the question, so far as relates to the first resolution, so that it may be taken upon that separately.

The PRESIDENT. The question will be taken on ordering the first resolution to a second reading.

The question being taken, there were, upon a division—ayes, 140; noes, 90.

So the resolution was ordered to a second reading.

The question was then taken separately, on ordering the second resolution to a second reading, and it was decided in the affirmative.

Mr. HALLETT, for Wilbraham. I ask for the yeas and nays on ordering the third resolve to a second reading.

The yeas and nays were not ordered, and the question being taken on ordering the third resolution to a second reading, it was decided in the affirmative.

The question was taken on each of the succeeding resolutions separately, and they were ordered to a second reading.

On motion by Mr. DUNCAN, of Williamstown, the Convention then adjourned until nine o'clock, to-morrow morning.

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WEDNESDAY, July 20, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The Journal of yesterday was read.

*Lieutenant-Governor.*

On motion of Mr. CUSHMAN, of Bernardston, the amended resolves on the subject of the lieutenant-governor were taken from the table and placed upon the Orders of the Day.

*Orders of the Day.*

The Convention proceeded to the consideration of the Orders of the Day, the first item being the motion of the gentleman from Fall River, (Mr. Hooper,) to reconsider the vote by which the resolves relating to the incorporation of new towns had been indefinitely postponed.

On motion by Mr. THOMPSON, of Charlestown, this item was passed over.

The resolves on the subject of the Judiciary, and the resolves on the subject of Harvard College were also passed by.

*General Laws for Corporations.*

The resolve on the subject of General Laws for Corporations, being the next item on the calendar, was taken up for consideration. The question being upon its final passage.

The resolve was read as follows:—

*Resolved*, That it is inexpedient to incorporate into the Constitution a provision that corporations shall not be created by special act, when the object of the incorporation shall be attainable under general laws.

Mr. CHAPIN, of Worcester. I voted against the resolution as amended, when it was before us on a previous occasion; and I wish to give some reason why I did so. It seems to me there is a misapprehension as to its meaning and operation, because I find that gentlemen voted in its favor on precisely different grounds. Some voted for it because it meant nothing, in their opinion; and others, because, I am bound to suppose, they expected it would accomplish something. Now the difficulty which I have in regard to it, is this: when I vote for a resolution, I wish to vote for one which is intelligible to myself, and the meaning of which I can, at least, think I understand. Now, I wish to make one proposition, and to ask this question of the members of this Convention: Do they wish to adopt in the Constitution a provision which will forever forbid the legislature granting any charter for a railroad? Some would say they do, and others that they do not. Now I ask if, upon that resolution, there is not a question whether the legislature will have the right to grant such a charter? What is the meaning of the clause "when the object of the incorporation shall be attainable under general laws." If it means that the legislature are to decide whether it is attainable or not under general laws in existence, why not say so? If it means an incorporation, the object of which is, in its nature capable of being attained under general laws which may be passed, why not say so? There is an uncertainty about it which makes it difficult for me to vote for it. I would not be willing to vote to give to the legislature power, under a general law to charter a corporation which should have the right to make a railroad or a turnpike so that the company might exercise the right of eminent domain, and so that it might appropriate your land and mine at its election, reserving to us only the right to have compensation. I believe that it should be left to the legislature to pass special acts for corporations of this kind. I am not an advocate for vested rights, but I am an advocate for the doctrine of good faith in legislation. If you and I, Sir, have invested our money in a

railroad originally, it has not been for the purpose of making money by the investment, but for the purpose of encouraging the enterprise. Are we to make it necessary for the legislature to pass a general law on the subject, so that this question can never be examined by the legislature as each case arises—and so that A, B and C may establish railroads where they please, and locate them over every acre of the Commonwealth without any special legislation upon the subject? I do not say that this resolution necessarily involves this result, but I do say that it leaves it in vagueness and uncertainty, and I am unwilling to adopt a resolution which contains in itself the elements of uncertainty, doubt, and consequent litigation.

I find, on looking at the Constitution of New York, there is a provision somewhat like this resolution; but there is in that Constitution an expression like this: "when in the judgment of the legislature it shall be expedient." Now suppose the legislature of Massachusetts should grant a special charter for a railroad, this resolution standing as a part of the Constitution. You go on and take stock in that road; and by and by, for some reason, you refuse to pay your assessment. The road is under way, the money has been invested, but persons who have taken stock, refuse to pay their assessments. Suppose they are proceeded against, and they come before the court and say that the legislature has no constitutional right to grant that special act. Then comes the question whether it was constitutional. It may be decided that this resolution means that no special act shall be passed when there is a general law upon the subject. Well, if it means that, it does not accomplish what is intended by its friends, because, all that the legislature would have to do would be to repeal the general law, whenever a special act should be required. It seems to me that the amendment introduced the other day by the gentleman from Oxford, contains the true principle. He offered an amendment that certain corporations for certain specified purposes, should not be chartered, except under general laws; and he specified what they should be. They were subjects in relation to which the principles are well settled, and which are well understood by the community. But it seems to me that there is a vagueness about this resolution which will give rise to litigation hereafter, and this in the establishment of an organic law of the Commonwealth we should carefully avoid; therefore, unless this can be amended so as to make it certain as to what we are doing, I feel bound to vote against it as I did before.

Mr. SCHOULER, of Boston. After the very decided vote, in favor of this resolution the other day, it may appear like hardihood or impudence, to rise in the Convention, and attempt to speak against it. But, I do not believe that the Convention fairly understood the whole matter, when they voted upon it before. The question was taken immediately, after a very able and eloquent speech by the gentleman from Conway, (Mr. Whitney,) and I think that he succeeded in presenting his side of the question exceedingly well, by leaving unsaid certain things which had better been said. The whole strength of his argument was, that we should have a general system of corporations. To that, I have no objections. We have now, upon our statute books, a general corporation act, for manufacturing and mechanical, and other business purposes of that kind. We have also, a general law with regard to banks. I have no doubt that these laws will stand permanently, upon the statute books of this Commonwealth. But, I am opposed to taking from the people forever, the right to say, whether they shall have the right, under any circumstances whatever, to make a special act, for any special purpose. I desire to let the Constitution remain, so that the people shall have the power. I do not wish, for instance, that the people of 1853, shall bind for all time to come, the people of other years. I wish the people to have the right to say through their representatives, after they have heard a case, whether the legislature shall act upon it or not, keeping these general laws all the time upon the statute book, so that whoever wish to form themselves into corporations under these general laws, may do it.

There is another objection to this resolution, and one which the gentleman from Conway, avoided altogether; and that is: if we place this provision in the Constitution, we give to those special corporations now in existence—banking corporations—a monopoly for the next twenty-five years at least; for their charters extend until 1780, and they were all chartered the year before last. The very legislature which passed this general banking law, also re-chartered every bank in the Commonwealth. The very legislature which passed the general joint stock law, also incorporated companies for mechanical purposes, so that the theory and argument used upon that occasion was, that we would have both systems in operation; that is, we should have a general banking law for all those persons who think a general banking system is best, and wish to avail themselves of it, and also with regard to joint stock companies.

The proposition before us is to deprive the legislature of any supervision whatever over this great question of corporations and I think the

argument put forth by the gentleman from Worcester, this morning, is, of itself, conclusive, that we ought not thus to tie up the hands of the legislature. There is no doubt at all but that we can pass a general law with regard to railroads, as well as with regard to banks; and I ask whether it is the best, the purest, and the surest policy to allow persons to form themselves into corporations for railroad purposes, and run a railroad through our land, if we have any, to any point they please; whether the effect of it will not be to depreciate the property of individuals now in corporations of that kind, and whether it will not bring up the question of parallel roads? After men have invested their property upon a pledge of the State, in building railroads, I think it ought to be protected in some degree, upon the faith which the State has given.

Now, Sir, I think the argument is unanswerable, that all these matters ought to be kept in the hands of the people, and that we should allow them to do as they think best when the circumstances come up; and that is all that I desire. I think it is wrong to cramp the legislature of our State in this way. We have already general laws, and I trust that these general laws will remain; I have no doubt that they always will remain. There was no attempt last year to repeal them, and there will be no attempt to repeal them. It seems to me that there is an argument, and there is a strong reason, why we should keep this great power in the hands of the people, so that they can act upon the cases as they come up, and not forever exclude them from being heard here through their representatives. I trust that the order will be defeated, and that we shall leave the Constitution precisely as it now stands.

Mr. DAVIS, of Worcester. I trust, Mr. President, that this proposition will be adopted; and it strikes me that if the members of the Convention will consider the matter, it would be adopted almost by a unanimous vote, if they are desirous of the prosperity and happiness of the good old State of Massachusetts. It is true that this is an important question; it is one which is to effect a major portion of the wealth of Massachusetts; because, by the last valuation, there are in this State about six hundred millions of property, and a majority of all this property, or more than three hundred millions, is now tied up in special acts of incorporation, where certain individuals have special privileges over the mass of the people. This has been done substantially and mainly during the last quarter of a centuary. With general laws upon the statute book, last winter there were special acts of incorporation passed by our legislature, to the amount of twenty-six millions of dollars; notwithstanding we had a general banking law upon the statute book, banks were incorporated to the amount of ten millions of dollars, when there was not specie enough in Massachusetts, by the bank returns, to put into these new banks to carry them into operation. Gentlemen know what the law is, and what men have to swear to, in order to get these banks into operation; and yet in the face and eyes of the returns of these banks that there was only three millions of specie, not ten cents to redeem a dollar, of the deposits for the bills in circulation, ten millions of dollars of capital were created by these special acts last winter, for banks; and for other business corporations, some sixteen millions more.

Gentlemen can easily see the whole length and breadth of this question, if they will look at the volumes of our special laws. Here are eight large volumes of special laws for the few, and two volumes of general laws for the many. This will show that there has been a system of legislation here in this Commonwealth, for the last quarter of a century, for the benefit of the few, and not of the many. Now, the principle of the proposition is to bring corporations, whenever practicable, under general laws, so as to legislate for all the people of the Commonwealth. The objection which has been taken by my colleague, (Mr. Chapin,) in my judgment, has no force in this particular; because, when the application comes up for a special act, it is for the legislature to judge, before they grant it, whether it can be be brought under the general law. There may be cases, and I have no doubt but that there will be cases, in which it will be necessary to grant a special act; but, whenever they can be brought under general laws, they should be brought under general laws that will apply to the whole subject, and operate alike upon all the people. If gentlemen would go into a consideration of this matter—take up the ponderous volumes of special acts, and see how much time has been spent in legislating for the few—they will perceive that hundreds of thousands of dollars will be saved, in the mere business of legislation, by the adoption of this simple principle; for, if they will look over the work of last winter, they will perceive that three-fifths of the whole time was spent upon special legislation. Now, the question is—and I want gentlemen to meet it directly—is it right to legislate for the few or for the many? Should not our laws operate for the benefit of the whole people of the Commonwealth, and not for the few?

In my judgment, Mr. President, if we had not been trammelled by these special acts, which are

calculated to cripple, to break down and destroy individual enterprise, the population of Massachusetts, instead of being a million, would have now been a million and a half; and instead of the property of the Commonwealth amounting to six hundred millions, it would have amounted to a thousand millions of dollars. What has made fifty-five thousand of the native citizens of Massachusetts emigrate into the State of New York, where they can live under general laws, and where there is a fair competition in all these branches of business?

Yes, Sir, fifty-five thousand of our native-born citizens have gone out from Massachusetts, as is shown by the last census; and they have gone into New York to get a livelihood, simply because they were trammelled here, and all competition was broken down by these corporations. Take an illustration. At first, individuals in this Commonwealth set up establishments for the manufacturing of railroad-cars, and they did well, and were prosperous. By and by it was discovered to be a prosperous business, and people petitioned the legislature, and got an act of incorporation. By the combination of capital they succeeded in putting down prices, and they endeavored to crush every individual who was in the business. They accomplished this, and failed every individual in the Commonwealth who was engaged in this business; and in the effort to do this, they failed themselves. If gentlemen will look into the history of these special corporations, they will perceive—for it is obvious on the face of it—what these special acts are desired for. It is because those who ask for them want special privileges. What are these special privileges for? They are to enable them to gain an advantage over the masses of the people; that is all the reason why they come to the legislature for these special acts. But, says the gentleman, this is to open the door too wide, you are going to make more corporations, if you have such a general law. But when this general law comes before the legislature, I have confidence enough in the representatives of the people, to believe that a general law, which is to affect the whole people, will be guarded, so that men cannot get, under a general law, what they get under special laws, where they come into the legislature and have hundreds of petitions for special acts piled up on the table of the House, and, by a system of log-rolling, secure the passage of an act giving special and exclusive privileges.

Mr. CHAPIN. I wish to inquire of my colleague, who is to decide whether the object of the corporation can be attained under general laws or not.

Mr. DAVIS. The legislature will judge as to that matter.

Mr. CHAPIN. I suppose that the legislature, under this general law, could pass a special law, declaring that, in their opinion, the object was not attainable under general laws, and should therefore be chartered. I will also ask the gentleman another question: whether, in his opinion, the legislature can pass a general railroad corporation act?

Mr. DAVIS. There are general laws relative to railroads. I admit that railroads should never be permitted without some action on the part of the legislature; but yet there may be general laws that will affect the whole. The principle is substantially that which has been adopted in other States. It has been adopted in the State of New York, and it has operated well there. If gentlemen will look at the last census, and see the tide of population which has gone into that State, they will see how much this system has operated for her advancement, and they will see one of the causes which has driven energetic young men from this State. This leaves it in the power of the legislature to determine the matter. Take, for instance, the banking law of Massachusetts. The general banking law now upon the statute book is much more stringent than these special laws, which have been given to these individuals; and that is the reason that the bank men do not like it. Under the present system they can issue any amount of money they please, without anything to redeem it, in direct violation of the Constitution of the United States, in my judgment. The Constitution of the United States establishes the fact that gold and silver shall be the standard by which we are to estimate the value of our goods, lands, wares, and merchandise; and yet we have another standard here in Massachusetts. Ten millions of bank capital are created in a single year, and everything is raised in value, not comparing it by the gold and silver standard, but by the paper standard, which is not a representation of specie, because, by the last returns of the banks there is not ten cents on a dollar to redeem their circulation and deposits. Why are all these ups and downs in trade, commerce, and manufactures, except from the constant change and variation of the amount of this paper circulation? And this is done for the benefit of the few, who wring their thousands from the masses. But if these ten millions of bank capital had been created under a general law, instead of being created under special acts last winter, it would have had a material effect upon the prosperity of this whole Commonwealth. The man who sits in State Street has the control of more than seventy mil-

lions of dollars—the control of all the paper circulation in New England. Every gentleman knows very well that all the banks pay tribute there. No bank can go into operation in New England, until it pays tribute to State Street; and whenever they see fit to put on the screws there, and to make money scarce by curtailing the circulation ten millions, they can do it, and what is the consequence? The farmer's produce falls, and the manufacturer's produce falls in value—all the products of labor fall, and the knowing ones can take the advantage and buy up what they want. The screw is raised, money is plenty, prices increase, and the knowing ones reap the harvest; and the people suffer, and are defrauded in that way. Their honest earnings are taken up in this manner; whereas, if all this business had been entered into under this general banking law, which stands upon your statute book, they could only issue so far as they have the money to redeem their paper with, and every bill-holder would have been safe with his bills. But no! they go on passing these charters, these special acts to give privileges to the few at the expense of the many. I think there is a sufficient guard, if the legislature should pass a general act, for they will do it with vastly more care than they exercise in granting a special act. It is impossible for them to review all these special acts with much care, as numerous as they are. Nobody knows the law with regard to these special acts. You may ask the best lawyer in this Convention about any particular charter, and he could not tell you unless he had happened to have occasion to examine it, and thus to become familiar with its provisions. But if we had a general law, every lawyer would understand it. Now, the simple proposition is to bring these special acts under a general law. Why, Sir, they have become so numerous in this Commonwealth, that—as gentlemen will see if they turn to document No. 37—it takes ninety pages, to enumerate these special acts! Here is a return made by the Secretary of State, filling ninety pages, just to name these special acts. We have gone to the extreme of any State in the Union. If gentlemen will look at the special acts of other States, they will find nothing to be compared with it. Now, Sir, I ask for this simple provision; it leaves it for the legislature to judge whether these corporations require a special act, as each case presents itself. I know, that under different legislatures, there might be different decisions. There is a certain set of gentlemen who think that it is proper to legislate for the few at the expense of the many, and they would judge that it was best to grant a special act; but whenever you have a legislature who believe that they ought to legislate for the many, and not for the few, then they would give them a general law.

I see no objection to it, nor do I see why it does not obviate the objection of the gentleman from Boston, (Mr. Schouler,) entirely; that it leaves it with the legislature to determine; so that either a railway, or other corporation, can obtain full privileges to carry forward any needful enterprise. But to give privileges to any corporation, that will tend to crush individual enterprise; to all that class of corporations I am opposed. If they are placed under a general law, then there is no special privilege, and they will do no harm.

Mr. GRAY, of Boston. It appears to me, and I think it will so appear to most gentlemen, who look coolly at the question, that there are, in fact, two questions before us; and I certainly think—with all respect to some of the gentlemen who have preceded me—that these two questions have been confounded. These two questions are, first, that corporations—and, I will add, a great number of corporations—are an evil; that it is an evil to have this system of carrying on business by means of joint stock companies. Then, Sir, the next question is—suppose that it is not an evil, but a benefit upon the whole, at any rate a thing not to be prohibited—how shall these corporations be created? What is the most convenient and proper way of doing it? Now, I think, that these two ideas have been confounded by gentlemen in their arguments. We are told of millions of capital being locked up in corporations; we are told that the legislature favor a few among the many; and we are farther told, that these corporations destroy individual competition. That is one branch of the question. And if all these arguments are true to the extent to which gentlemen have maintained them, what would be the course which we ought to take? Why, Sir, I think that an unbiased observer would naturally say that your course is to have no more of them, and to put an end, as far as you can legally, to all that you have got—if not on a principle of immediate abolition, at least, on one of gradual abolition—of these joint stock companies. But, Sir, nothing of the kind is proposed here. I can admit every word uttered by the gentleman from Worcester, (Mr. Davis,) and those who have taken the other side of the argument, and then I would ask them, what do you intend to propose? Do you make one corporation less? Not one. What then? Why, you give them a different origin. You change their birth-place, but their nature is the same.

Now, the gentleman talks about three hundred millions of capital being locked up in corporations, and says that in this you have been legis-

lating for the benefit of the few, to the disadvantage of the many; and yet, Sir, if these corporations are such a great evil as gentlemen would fain make the people believe, they would open the door, and let every-body come in, and by this process increase the evil to an indefinite extent. I tell the gentleman from Worcester, that by adopting this course, he will legislate for the few after all, for these three hundred millions of property are held not by a very few, absolutely speaking; but, considering that those engaged in business corporations are confined to a few spots, and considering that the great masses of the rural and laboring population—considering that these great masses are not owners in joint stock companies, and cannot well be—you still leave a very large majority of the people without the limits of corporations.

Now, Sir, I have no objection to a system of joint stock companies, always bearing in mind that I reserve a control over them; I have no objection in that sense to legislate for the few, provided we benefit the few without injuring the just rights of the many. If we benefit the few directly, and the many more than they were benefited before; if we take away no man's privilege by giving a privilege to a few because they want such privilege, where is the harm? Gentlemen say that this is a monopoly. I think it is not. If gentlemen want to be incorporated, and they come to the legislature for such purpose, the legislature having investigated the matter, and feeling assured that no party is to be injured by such grant will, as a matter of course, as it is a matter of duty, give them a special act of incorporation. But if they do not want to be incorporated, if the people generally think that these corporations are a great and crushing evil, then the will of the people will reach the legislature, and the legislature will take pains not to let every-body be incorporated, but will endeavor to diminish such corporations as we have.

Sir, the distinction which the gentleman makes, reminds me of a law formerly existing in some of the petit German States, and which, for anything I know, may exist now. In England, and most other countries in which they have orders of nobility, the king or sovereign ennobles whom he pleases; but in these German States, baronies could be bought; every man might have a barony who could pay ten thousand dollars for it. And was it any less an order of nobility because a man bought it himself instead of its being conferred by the crown? No gentleman will say that it was. An order of nobility, I suppose gentlemen here would consider as an evil. I suppose that we would all think so. And what course do we take in this respect? Why, Sir, we prevent their existence altogether. But my friend, who considers corporations an evil, and would prevent men from going into them indiscriminately and without means, yet does not prevent the man with ten thousand dollars from going into them. After all, it seems to me that this is only legislating for the few; for the "many," as the gentleman calls them, stand in the same degree by the one proposition as by the other.

I thought the argument of the gentleman's colleague very conclusive, but it seemed to me that it did not go far enough. I shall be obliged to go against the amendment, and also against the Report, for reasons which I have stated before, and which I will not now repeat. But I will say a word or two in addition to what I have said, and my object is rather to direct the minds of gentlemen to what I consider the true state of the question—rather to lead them to take a discriminating view of the issues before them, and I think only a little reflection is necessary for that—than to urge any other argument.

Now, we speak of creating corporations by special acts; and we say that we voted to create them by general laws. The truth is, if we would be precise, that I think our system is a mixed system. Take an illustration. Say that a manufacturing company comes up, or that you and I establish a milling company at Lawrence. We come in and petition for an incorporation, with a certain amount of capital. The legislature grants us an act of some twenty lines; and what is the provision that it puts in? It grants a charter with all the powers, and subject to all the liabilities of the 38th chapter of the Revised Statutes. The legislature grants this incorporation partly by general act, and partly by special act, covering the few points which, from the nature of the case, cannot be covered by a general act. They retain the provision of allowing persons to incorporate themselves under a general law, unless they see some objection to it. Now, let me ask, is not that distinction a wise one? Are gentlemen prepared to say that every-body ought to go in under all circumstances, and that to all future time? I think not. Is this to be done in regard to railroad corporations, canal corporations, and the like? No, Sir; because you would put into their hands the power of eminent domain. By a construction of the Constitution not warranted in its express terms,—as an original question, I think not a clear one, nevertheless highly necessary it may be,—we give them a power of eminent domain; we hand over to them our sceptre, and they march through any man's land they please; and they give him such remedy

—the best remedy, perhaps, that can be had; but how near it is to perfect remedy, gentlemen can pretty well judge—they give him such remedy as he can find, by going to law for his recompense; for it does happen, that these corporations are sometimes difficult to deal with. But we give them certain powers which they generally take care to exercise. For instance, here is a private corporation in some business or other with which the public interest is connected, say a railroad company; or, if you choose, take another class of corporations—those engaged in the banking business, as that has been so specially referred to. Well, Sir, these corporations are connected with the public interest. They are not mere corporations for the transaction of business benefiting or injuring the public it may be by their relations with those who are their customers, or who transact business with them; but they have the power of regulating the whole currency of the State, and that I call a high public power. They can affect the prosperity of those who can least afford to lose any anything, and therefore, I think that these are corporations over which the legislature ought to exercise some control. They ought to adopt something more than a general act. But the general act they have now. They have the 36th chapter of the Revised Statutes, which, after all, regulates the banks; a provision enforcing the soundness of their currency; a provision which enforces their keeping themselves in good condition, as far as banking men under the supervision of the statute can affect it. These, and other provisions of importance, are all contained in the general act. Well, but my friend thinks that there ought to be other provisions—provisions as to the investment of their capital—provisions like that existing in the New York system; establishing a different basis of currency, a better system than ours. Now, how can that objection be met? Why, Sir, it can be met in a much less hazardous way than he proposes to meet it. Let him go into the legislature and take up the 36th chapter of the Revised Statutes and persuade the legislature to alter it, or else learn a lesson which we all have to learn even here—that is, to be voted down when we think and feel that we are right. That is the course, Sir.

Now, Sir, I will state what I think has had great effect upon the minds of gentlemen, and that is the mere fact of the saving of the time of the legislature. Gentlemen meet here, and they sit here—it may be for a hundred and twenty days—they come here every morning with a most determined purpose to end the session at the earliest hour; but they find, somehow or other, that the session spins on, and issue after issue arises, and time after time is fixed upon for adjourning, and one branch fixes a time and the other branch postpones it, as it may be; and, after all, the legislature, like all things human, does at sometime come to an end, at a time which nobody anticipated when they commenced their labors—that is, at a later day. Well, Sir, it is customary to ascribe all this to the immense mass of "private business," as it is called; but, Sir, I think they ascribe too much to that cause. If it were of any purpose to say much about it, I should say that the size of the House had something to do with it, but that might be a disputed point. But there is no dispute that the gentlemen of the House of Representatives do sit here for the first three weeks, appearing to those who are without as if they were helping each other to do nothing, while they are quietly preparing their business. But are we sure that this can be dispensed with? Take, for instance, a railroad corporation. We wish, when such a corporation is going to march through the land of individuals, to know something about the line they are going to take; we wish to know something, not only about the practicability of the enterprise, but something, also, in regard to the route that is to be taken. Is not this necessary and proper? Are we prepared to say—as my colleague has already spoken upon that point—that any company of men may come in and organize, under a general act, and run a railroad where they please? Sir, how can we say so? There might be a difference in the cases. Ten years ago, if we had authorized a railroad to run through the city of Lawrence, or had we authorized gentlemen to build a railroad where they pleased, they might have run a road through that ground, and would have done no more harm than driving a railroad through the centre of Africa. But what should we say of driving a railroad through the centre of Lawrence now? So with banking corporations. Suppose that application should be made for a bank at Lawrence, with a capital of two millions. The legislature would hesitate. They might grant it to a company in State Street. They are both respectable places, but are far from being equal in the control of business.

The gentleman talks about the control in State Street. Sir, he must alter something else than general laws, before he can affect anything here. There are such things as general laws of trade, which are usually above the statute laws of any particular place, and are world-wide in their application and effect. What is done on the London exchange, we feel here; and twenty declarations of independence would not exempt us from it. But suppose the gentleman takes a general

act—what is to prevent the owner of twenty millions from marching into State Street and doing all that the Suffolk, or any other bank, does now? Sir, I am at a loss to see it.

Now, Sir, I did not intend to trouble the House again upon this subject, and I should not have troubled them as it is, if I thought their minds were made up upon the subject. I did think that the question would not stand the worse for a little farther consideration. But, be a corporation a benefit, or be it an evil, they will be incorporated, and it is assumed that they will be incorporated under this general act; that if there are any provisions that ought to be incorporated in a general act, they can be inserted in the thirty-sixth chapter of the Revised Statutes now, and every corporation can, by its charter, be referred to that statute, and to the forty-fourth chapter, which puts them all under the control of the legislature. I say, Sir, that I humbly conceive that all the evils which result from corporations, will result from them whether they create themselves, or whether they are created under a general act. I say that the number of holders of stock in joint stock companies are pretty numerous, but they are not a majority, or anything like a majority, or even anything like a respectable minority, of the whole population of the State. But whether we legislate for the few or for the many, the question now seems to be, whether we shall legislate for them by general act, or by special act.

But I go back, for a moment, to the objection which I advanced upon a former occasion. I am ready to leave this matter with, and I think it is best to trust this matter to, the legislature; but I would also say—and if I ever expected to be a member of the legislature, I would say the same thing there—I think it desirable to work by general laws as far as we can conveniently do so. I can see how we can have general laws for insurance and manufacturing companies, because they are companies for the transaction of private business. They do not seem to come in contact with the public generally, but only with their own customers. But as to railroad companies, they exercise the right of eminent domain, and come in contact with many people who have nothing to do with them of their own will, and never want to have. I say, with regard to banking corporations, that a state of things may arise in which the legislature may properly hesitate as to granting a charter, out of regard to what they think will be the effect upon the currency of the State, and in which effects every man, woman, and child in the Commonwealth are interested, and by which the poor are affected more than the rich, because they have their all to lose by it, and less discretion and power to protect themselves from loss.

One word only, will I say farther, in regard to real estate corporations. Shall we part with the power of discrimination of, and control over, them? Real estate corporations are sometimes a matter of necessity; for instance, those in relation to wharves and flats. Ever since the formation of the Constitution, I suppose, such corporations have been formed by law, because it is difficult to manage such matters in any other way. A limited partnership is so impracticable and inconvenient in regard to them, as to prevent the adoption of such partnerships. But the legislature might well hesitate to create many such real estate corporations as have been created heretofore, and may hereafter be incorporated. I do think that whole matter had better be left in the hands of the legislature. They can, if they see fit, adopt every one of the ideas of my friend from Worcester, (Mr. Davis,) and what is a matter of some consequence, if experience, which may throw some new light upon their minds, should lead them to vary and modify their course hereafter, the door will be open, to enable them to do so.

Mr. FRENCH, of Berkley. I am in favor, Mr. President, of these resolves, and particularly the third one. I never was very friendly to corporations. I was never fond of monopolized privileges, for I always supposed that corporations got more than belonged to them.

In reference to banks, let us look at the matter, and see whether or not, we ought to have a general law by which all the people who wish to be incorporated into such institutions, who wish to lay aside a part of their property, and be incorporated on the rest, may not have the privilege. Banks have undertaken to furnish the country with a circulating medium, and how stands the matter now, under that attempt? Go out and make inquiries in this city, and the people will tell you that they are greatly embarrassed every day for the want of change to do their ordinary and daily business. Undertaking to furnish the country with a circulating medium, they do not do it.

Are banks incorporated monopolies? Is there any other class of people that have the privileges which pertain to banking corporations? I wish some one would show me any other class of the community, who are drawing interest on their own indebtedness—on their own promises to pay. Other people are obliged to pay interest upon their promises to pay, but banks are exempted from that rule.

There is another consideration connected with this matter. There never was a State bank created, which was not created directly in violation of the Constitution or Federal Compact. Nothing in that instrument was more perfectly guarded than the regulation of the currency. Its framers saw at a single glance, that the regulation and control of the currency, was the highest prerogative of sovereignty, and they saw that they could not put its control into the possession of any body of men, or corporation of men, and they gave it to the whole people of the United States; to my father and to yours, Mr. President, to you and to me as their descendants. They said to the people, you shall have the control of the currency. The people could exercise that power only through their representatives in congress. The Constitution declared that congress should have the power to coin money, and to regulate the value thereof, and of foreign coin. But how is that matter regulated now? Who coins money now? That power was given to the whole people, but where is it now? In the hands and possession of the banking corporations. Are they acting for the public good, or for their own private benefit? This power, Sir, has been stolen from the people, and they do not know it. What power is there in congress to regulate State banking?

Well, it was said by the gentleman who a few moments since stood where I now do, (Mr. Gray,) that they control not only the currency of the country, but regulate and control the value of the whole property of the country. Is that an exclusive privilege, or is it not? Is it an exclusive privilege to diminish the value of any man's property, when they choose, in order to make the most of it, and to increase the value of that property when it is for their interest to do so? Now, when the people come forward and ask for a general law, and ask not to be shut out from the privileges which other people have, the favorites of the banking system come up and make a great complaint, and say that it would be very improper to do so. They say the people ought not to have this privilege, and that it does not belong to them.

Banks promise to pay, and they give their notes promising to pay on demand. How is their capital stock made up? Is it made up of specie; or is it made up of stock notes? Very poor property that, with which to pay specie upon demand. Thus it is improper, very improper indeed, that the people collectively should have a general act giving them equal privileges with others, so long as it is important that those who now have the power, should retain it.

I hope, Sir, this resolve will pass, so that the people shall have some chance. Now, what does this power of incorporation do? It gives to a certain class of the community the right to trade to any amount, whilst at the same they are held responsible to pay only a specified amount. Has any other class of people that privilege? No. An individual is holden to pay his debts, to the last farthing, and that is right. I hope, Sir, in order to remedy this great complaint which is now made throughout the country, that the next legislature which convenes, will pass a law that no bill under the denomination of five dollars, shall be passed in the State of Massachusetts; and if they do that, believe me, there will be no complaint of a want of change to do business with. I submit the question to the Convention, whether or not Mr. Webster was right, when he said that the most effectual way of fertilizing the rich man's field by the sweat of the poor man's brow, is this State banking system.

Mr. WATERS, of Millbury. In the discussion of this subject, frequent allusions have been made to the industrial interests of Massachusetts, without defining what they are; and, by way of episode, we have been entertained, occasionally, by a chapter upon free trade. I propose to present, from official documents, some statistics, to show what those interests are, and also to prove what has been the effect produced upon them, by the repeal of the protective tariff in 1846—that being regarded as an approximation to free trade.

To these facts, I bespeak the candid attention of the members, as business men, without regard to party affiliations or favorite theories in political economy, for they involve questions vital to the growth and prosperity of our ancient Commonwealth. *What are the industrial interests of Massachusetts?*

From a volume of statistics, published by the Secretary of State for the year ending April 1, 1845, the annual products of the principal branches of industry, were as follows:—

I. COTTON MANUFACTURES.

| | |
|---|---|
| Cotton Cloth, . . . . . | $12,193,449 |
| Calico, . . . . . | 4,779,817 |
| Bleaching and Coloring, . . . | 2,166,000 |
| | $19,139,266 |

II. BOOTS AND SHOES.

| | |
|---|---|
| Boots and Shoes, . . . . | $14,799,140 |
| Leather, . . . . . | 3,836,657 |
| | $18,635,797 |

III. FISHERIES.

| | |
|---|---|
| Whale, | $10,371,167 |
| Mackerel and Cod, | 1,484,137 |
| Candles, Sperm and Oils, | 3,613,796 |
| | $15,469,100 |

IV. AGRICULTURAL.

| | |
|---|---|
| Hay, | $5,214,357 |
| Grain, | 2,228,229 |
| Potatoes, | 1,309,030 |
| Butter, | 1,116,709 |
| Wood, Bark and Charcoal, | 1,088,656 |
| Fruit, | 744,540 |
| Vegetables, | 515,082 |
| Cheese, | 398,174 |
| Wool, | 365,136 |
| Milk, | 304,917 |
| Beef, Brooms, Honey, Hops, Poultry, &c., | 917,787 |
| | $14,202,617 |

V. WOOLLEN MANUFACTURES.

| | |
|---|---|
| Woollen Goods, | $8,877,478 |
| Carpeting, | 834,322 |
| Worsted Goods, | 654,566 |
| Hosiery and Yarn, | 94,892 |
| | $10,461,258 |

VI. IRON.

| | |
|---|---|
| Rolled and Slit, and Nails, | $2,738,300 |
| Castings, | 1,280,141 |
| Machinery, | 2,022,648 |
| Cars and Carriages, | 1,343,576 |
| Anchors, Cables, &c., | 538,966 |
| Shovels, | 275,212 |
| Scythes, | 113,935 |
| Cutlery, Axes, and Edge-tools, | 242,616 |
| Engines and Steam Boilers, Ploughs, Tacks, Tools, &c., | 1,433,807 |
| | $9,989,201 |
| VII. PAPER, | 1,850,273 |
| VIII. STRAW BONNETS AND PALM LEAF HATS, | 1,649,496 |
| IX. VESSELS, | 1,172,147 |
| X. GRANITE, | 1,065,599 |

Adding to the above, various miscellaneous items, the aggregate of the products of the State for that year, is $115,000,000.

From these data, it is obvious, that the most prominent interests of Massachusetts are manufacturing and mechanical, whose aggregate annual products are at least eighty millions out of one hundred and fifteen millions—the entire products of the State. Hence, it follows as a necessary corollary, that the prosperity of the State depends *chiefly* upon the success of those interests. When they are prosperous, the whole are prosperous, embracing all other interests; and *vice versa*. This is a proposition which the experience of the last quarter of a century has abundantly established.

Of these interests, the leading in amount of products is the cotton, which amount is greatly understated in the above table, from the fact that some large establishments refused to make any return. In amount of capital invested, this interest also far exeeeds either of the others. To manufacture cotton cloth requires a large investment in buildings, motive power, fixtures, machinery, &c., but in many kinds of business—the boot and shoe, for example—no such outlay is necessary. Indeed in most kinds of business the annual products largely exceed the capital invested, while in the cotton they fall below.

What has proved to be the effect upon this interest of the repeal of the tariff of 1842, in 1846?

I am prepared to prove, from official documents, that by that change in our national policy, Massachusetts has been set back one hundred millions of dollars in her valuation, and in amount of products seventy-five millions annually, amounting, in the six ensuing years, to four hundred and fifty millions. This statement will doubtless strike some minds as astounding and incredible, but I believe I am fully fortified by facts to sustain it.

The following table, taken from the Patent Office Report, 1851, (Agricultural,) exhibits the statistics of the cotton manufacture in different States:—

| STATES. | Number of Establishments. | Capital invested. | Value of entire products. |
|---|---|---|---|
| 1. Massachusetts, | 213 | $28,455,630 | $19,712,461 |
| 2. New Hampshire, | 44 | 10,950,500 | 8,830,619 |
| 3. Rhode Island, | 158 | 6,675,000 | 6,447,120 |
| 4. Pennsylvania, | 208 | 4,528,925 | 5,322,262 |
| 5. Connecticut, | 128 | 4,219,100 | 4,257,522 |
| 6. New York, | 86 | 4,176,920 | 3,591,989 |
| 7. Maine, | 12 | 3,329,700 | 2,596,356 |
| 8. Maryland, | 24 | 2,236,000 | 2,120,504 |
| 9. Virginia, | 27 | 1,908,900 | 1,486,384 |
| 10. Georgia, | 35 | 1,736,156 | 2,135,044 |
| 11. New Jersey, | 21 | 1,483,500 | 1,109,524 |
| 12. North Carolina, | 28 | 1,058,800 | 831,342 |
| 13. South Carolina, | 18 | 857,200 | 748,337 |
| All others, | | 2,884,700 | |
| Total, | 1,094 | $74,501,031 | $61,869,184 |

Of the capital invested in New Hampshire and Maine, it is estimated that two-thirds, at least, belong to people of Massachusetts, which, added to the amount invested in this State, makes an aggregate of $37,500,000 capital owned by Massachusetts in the cotton manufacture—a sum equal to fully *one-half* of the whole capital invested in this business in the United States.

The following table, taken from the same Report, exhibiting the number of bales of cotton manufactured in this country, from 1841 to 1850, will show how the cotton business was affected by the tariff of 1842, and also by its repeal in 1846:—

1841—267,850
1842—325,714
1843—346,744
1844—389,000
1845—422,597
1846—427,627
1847—531,772
1848—518,039
1849—487,769
1850—404,108

From this table it appears, that in six years, from 1841 to 1847, under the influence of the tariff of 1842, the cotton manufacture increased in this country 264,000 bales—an expansion equal to 100 per cent., while, in three years, from 1847 to 1850, after that tariff was repealed, it actually receded 127,664 bales, a contraction equal to 22 per cent. These remarkable results are to be traced directly to the repeal of the tariff of 1842, and no other cause can be assigned.

Let us now glance, for a moment, at the condition and prospects of the cotton-growing interest of the South. The following table, taken from Patent Office Reports, exhibits the annual number of bales produced, average price and value of the same for seven years, from 1846 to 1852 inclusive:—

| | | | |
|---|---|---|---|
| 1846 | 1,778,651 | 7.81 | $42,767,341 |
| 1847 | 2,347,634 | 10.34 | 53,415,848 |
| 1848 | 2,728,596 | 7.61 | 61,998,294 |
| 1849 | 2,096,706 | 6.4 | 66,396,967 |
| 1850 | 2,355,257 | 11.3 | 71,984,616 |
| 1851 | 3,015,000 | 12.11 | 112,315,317 |
| 1852 | 3,400,000 | | 136,000,000 |

From the above, it appears, that since 1846, the cotton crop has increased, in bales, 1,600,000,—equal to one hundred per cent. nearly, and in value, $93,000,000,—exceeding two hundred per cent. This accounts for the high degree of prosperity prevailing at the South, and the great advance in the price of slave property. In the face of this rapid and enormous increase of crop, the price has been fully sustained, which proves that the consumption has advanced *pari passu*, with the production. Of course there has been an increase in the cotton manufacture in the same proportion. The positive increase of the crop, is equal to four times the number of bales manufactured in this country, and consequently the increase in the number of spindles, must be equal to four times the whole number running in this country. Where has this extraordinary increase of manufacture been developed? Not certainly, in Massachusetts, nor in the United States, as has already been shown. While the cotton growing interest of the South, has increased since 1846, nearly two hundred per cent., the manufacturing interest of the North has remained stationary. But this increase of manufacture, corresponding to the increase of crop, has been developed mostly in England. The newspapers contained an account a short time ago, of one mill erected by Mr. Titus, of Manchester, England, covering six acres; and many other similar accounts of increase there, have been published.

Had this expansion been made in this country, it would have added two hundred millions of dollars to our manufacturing capital, and one hundred and fifty millions to our products annually. This loss of business is fairly chargeable to the advocates of free trade. What the country has gained by way of compensation, I have yet to learn. As one-half of the cotton manufacture in the United States, belongs to Massachusetts, it follows that one-half of this loss falls to her—that is to say, she has lost in her valuation, by the repeal of the tariff in 1846, *one hundred millions*, and in annual products, *seventy-five millions*, amounting in six years, to *four hundred and fifty millions of dollars*. This is not a matter of conjecture, nor of prophecy, nor of theoretic speculation, but it is a matter of absolute demonstration—a result, which a few short years has clearly proved. No other cause but the repeal of the tariff in 1846, can be assigned, and no theory of the free traders, can account for it. Here is experience against theory—practice against prophecy. If to any member these facts seem to be exaggerated, I would say, that no estimate was made for collateral interests, such as building, machinery, foundries, rise of real estate, trade of all kinds, &c. &c., which, when made, will be found to far outweigh all deductions that can be justly claimed on the score of exaggeration. If then, such disastrous results have accrued to the leading interests of Massachusetts, from an approximation to free trade, what are we to expect from its full realization, which some gentlemen

on this floor, have, with so much confidence predicted, at no distant day? The member for Berlin, (Mr. Boutwell,) in some remarks which he made in favor of this doctrine, was so sanguine of its early adoption by the people, that he said he would venture to predict, that in ten years, it would be the prevailing sentiment of the North; that Boston itself, would adopt it, and that at some remote period hereafter, a Custom House would be as great a curiosity, as the Coliseum of Rome, or the Temple of Carnac.

Mr. HALLETT, for Wilbraham. I rise to a question of order. The gentleman from Millbury is discussing the tariff, and the doctrine of free trade. Now, I am anxious to make a speech upon that subject of several hours in length. But if it is to come in here, I wish to know whether the subject is legitimately before the Convention?

Mr. WATERS. Whether legitimately before the Convention or not, I did not introduce the subject. In the discussion of this and various other questions, we have had several speeches in favor of free trade, and no member was called to order. Regarding this as a most fallacious and destructive doctrine, it seemed to me that some remarks, *per contra*, would not be ill-timed nor out of order. However, I do not wish to pursue the matter against the wishes of the House.

Cries of "Go on," "Go on."

If the expansion of business to which I have referred had been developed in this country, it would have enhanced the value of every *square inch* of territory in Massachusetts; added thousands to her population, and opened new avenues of wealth and employment. The programme of those gigantic enterprises at Holyoke and Lawrence would have been filled up, and scarce a foot of available water power in the State would have remained unoccupied. Many a water-fall now wasting its power upon the desert air, would have been brought into requisition, and filled the surrounding region with the music of prosperous industry. In short, the six years of leanness ensuing the year 1846, would have been years of plenty and prosperity. It has been a common impression in the country, even among manufacturers themselves, that under the tariff of 1842, this interest was stimulated to an unnatural growth, and was in danger of a reaction, from being overdone. But the foregoing statistics prove that this opinion was entirely erroneous; that rapid as was the expansion, it did not keep pace with the growth of the crop, nor the consumption of the fabric, but fell far behind both. Massachusetts has probably never known a period of so rapid growth and development, as from 1842 to 1847. Before this period, say from 1836 to 1842, there was a general crash, or breaking down of all kinds of business. General bankruptcy, and universal prostration prevailed, as though a tornado had swept over the land, until the passage of the tariff in 1842, when there was a simultaneous quickening into life of all our dead and prostrate interests; and they continued to grow in an accelerating ratio, until that Act was repealed, when their growth was arrested, as by a sudden frost. Some of them have since remained stationary—few have flourished—during the six famine years, being sustained chiefly by the strength and impetus before acquired, to the present year, which fortunately proves to be a year of plenty and prosperity, such as Massachusetts has not seen since 1845. What is the cause of this great change, this universal and exuberent prosperity? Not, certainly, that there has been any change in the policy of our government. It was formerly thought that loyalty on the part of the citizen, and protection of person *and property*, on the part of government, were reciprocal duties; but that is now called an exploded idea.

This change, it is well known, has been brought about, chiefly, if not solely, by the rise of labor in Europe. The drain of laborers from the workshops of Europe, to the gold mines of Australia and other regions, has been so heavy as to cause a general rise in the prices of labor and manufactured products, carrying them up to a grade where our manufacturers and laborers can thrive and prosper. No reason can be assigned, why we cannot, at all times, manufacture as cheap as in Europe, except the price of labor. If capital is cheaper there, so also are taxes very much higher. To obviate this difficulty—the higher price paid here for labor, and also to prepare the way for the glorious advent of free trade, the member for Berlin (Mr. Boutwell) proposes, and in his prophetic vision confidently predicts, the importation of large numbers of coolies from China. In this direction his prophetic vision even discerns an antidote for the removal of slavery itself!

Suppose this to happen; what is to become of all the Yankee boys and girls who now operate the machinery of our mills, and who are thus under-bid in the price of labor? Are they to be driven out from their native land, to make room for a horde of demi-barbarians from the Celestial Empire? Is that a wise and paternal statesmanship, looking to the best good of our country and our race? Besides, is the gentleman quite sure that these impassive Celestials, in wooden shoes, and with pumpkin-vine queues, are fitted to perform the labor of our versatile Yankees, with the same tact and rapidity? With all due deference

to that gentleman, I must say, that this vision of his seems to me more like a creature of fancy, than the gift of prophecy.

This whole, and much vexed question of protection, resolves itself into a question of labor. Capital, in this country, needs no protection. The rate of interest is always about three times as much as it is in England, while the price of labor there, averages about one-third as much as is paid here. Labor can never be so cheap under a democracy as under a despotism. The former is founded upon numbers, and makes no distinctions of persons, between the laborer and the lord, the mechanic and the millionaire. To enable the laborer therefore, to maintain the dignity of his station, it is necessary that he should be able to read books, take newspapers, educate his children, and have many of the comforts of life which are unknown to the boors of England, the serfs of Russia, or the coolies of China. He must maintain a higher and more expensive style of living, and ought not, therefore, to be exposed to a competition with the bone soup, and pauper labor of Europe. "But," say the advocates of free trade, "it is on the very ground of sympathy for the poor laboring man, that we advocate this doctrine. A tariff is indirect taxation, and operates unequally. In the article of sugar, for example, the poor man consumes six times, it may be, as much as the millionaire, and consequently pays six times as much tax. This system surrounds him unseen, like the atmosphere, and *he does not know how he is abused.*" Very likely. Probably he never will. For argument's sake admit all this to be true. If by paying one cent a day extra, on sugar, and as much more on a few other articles, he gets, instead of fifty cents, from a dollar and a half, to two dollars per day more for his labor, is he not the gainer? Where in the wide, wide world, is the laborer so well paid, as in this country? And here, especially in New England, labor is never in so great demand, nor so high, as at periods when the manufacturing interest is prosperous. Witness the present year, the years 1844, 1845, and 1846. For the reverse, witness the years from 1836 to 1842—from 1846 to 1850.

Who are the great sticklers for free trade in this country? Importers of foreign merchandise, resident agents of foreign manufacturers, bankers, and brokers, who have expended vast sums of money to buy up and subsidize some of our most influential presses. Much the largest proportion of the press, in this country, is concentrated in cities; and of that, a large share is enlisted in the foreign importing business. Hence, the general delusion which prevails upon this subject.

Another class of very obstreporous free traders, are the Southern planters, whose laborers are slaves. "Labor," say they, "should come from that quarter where it can be obtained cheapest." If this is a correct doctrine, we should expect that, like charity, it would begin at home. Let us see how their practice conforms to their teachings. The great interest of the South, is the slave interest. The raising of slaves is to Virginia, and the older slave States, what the raising of cattle is to Vermont—their most profitable production. Now, it is well known, that slaves can be imported from Africa, for two hundred dollars, which sell at the South readily, for eight and ten hundred—a difference of from three to five hundred per cent. But, be it remembered, whoever attempts to import this kind of labor is hung up at the yard arm, as a *pirate!* There is protection for you, with a vengeance! It is perfectly right and proper to bring the free labor of the North into competition with the pauper labor of Europe, but to bring the slave labor of the South, into competition with the slave labor of Africa, is PIRACY! True, the laws prohibiting the importation of this kind of labor, profess to be founded upon motives of philanthropy; but, on that score, what is the difference between the foreign and domestic slave-trade—whether the planter of New Orleans imports his slaves from Richmond, Va., from South America, or from Africa? If ever his highness, the arch prince of darkness may be supposed to grin horribly a ghastly smile, nay, to laugh outright, it must be when he hears Southern statesmen advocate the enforcement of these laws on the ground of humanity! They go in for free trade for the free labor of the North, and for entire prohibition, under a penalty of death, for the slave labor of the South. Abolish these laws, obtain your slave labor where it could be obtained cheapest, and you might reduce the cost of raising cotton fifty per cent., but you would also sink the whole valuation of the South, hundreds of millions. Let congress assume this ground, and we should soon witness as great a revolution at the South in regard to protection, as we have, recently, in regard to the doctrine of internal improvements. This doctrine they have denounced, until it has been fairly read out of the creed of all parties; and now, after the North has made all her own improvements, and built her railroads, the South find they want a railroad to the Pacific. Presto, these strict constructionists discover that there is nothing more constitutional, national, and patriotic than for the United States to build it for them, and if necessary, to take another slice from Mexico, to eke out the route.

One word more upon the doctrine of free trade, and I have done. This doctrine, in theory and on paper, appears very plausible; and in the great, good time a coming, when the commerce of the world will be unrestricted, it may, perhaps, be practicable; but at present, it is perfectly suicidal to our best interests, especially to labor. Reason teaches it; experience has proved it; speculative and superficial politicians are very apt to be carried away by it, and deluded, like the theorist in civil engineering, who said that railroads over our prairies ought to be perfectly level. When he came to reduce his theory to practice, he found that the Creator had made the earth round, and to make his road perfectly level, he must run it into the air or into the ground.

I have addressed these remarks to the members, as Massachusetts men, whose first duty it is to look after our own home interests. The bearing which this question has on the interests of sister States, of the United States, and especially on the finances of the country, opens a broad and inviting field, into which I have not time to enter.

The fling which has been made here, under the term "cottonocracy," at the largest industrial interest of the State, an interest which probably employs more persons, as well as capital, than any other in the State, seemed to me not only to be in bad taste, but to savor more of demagogueism than of that sound statesmanship which embraces in its ample and comprehensive scope, the whole interests of the whole Commonwealth.

Mr. STETSON, of Braintree. I desire to inquire if the previous question will cut off amendments from being made?

The PRESIDENT. The Chair will remark to the gentleman that there is no amendment pending, and if the previous question is ordered, it will be simply upon the main question, which is upon the final passage of the resolve.

Mr. STETSON. I have an amendment that I desire to offer. If the gentleman from Millbury will withdraw his motion for the previous question, and allow me the floor for five minutes, I should be under obligations to him.

Mr. WHITNEY, of Conway. I do not rise to oppose the previous question, for I think the general question has been sufficiently discussed. An amendment, however, has been offered, which I should be glad to have explained, and that is one reason why the previous question should not be put now.

The PRESIDENT. The amendment has been withdrawn.

Mr. WHITNEY. I was not aware of that fact. Then I am ready for the question.

Mr. MORTON, of Quincy. I have noticed, for the last hour or more, that gentlemen who have been addressing the Convention have received very little attention. Therefore, from the general intelligence of the Convention, I presume they have all made up their minds how to vote upon this question, and I hope the previous question will not be withdrawn.

The previous question was seconded, and the main question ordered, which was upon the final passage of the resolution.

The question was then taken, and the resolution was passed, there being—ayes, 212; noes, 76.

On motion by Mr. KNOWLTON, of Worcester, the Convention then proceeded to the consideration of the resolves relating to

*The Judiciary.*

Mr. KNOWLTON moved to substitute for the last resolve—that it was inexpedient to make any changes in the first, second, and fifth articles of the third chapter of the Constitution—the following:—

*Resolved*, That it is expedient so to amend the Constitution, that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the Governor, by and with the consent of the Senate, for the term of seven years; that they may be reappointed at the expiration of such term; and that all such nominations shall be made at least seven days before such appointment.

Mr. PARKER, of Cambridge. I rise to a question of order, that this proposition cannot be entertained, the subject matter having already been before the Convention and a vote taken upon it.

The PRESIDENT, *pro tem.* The Chair is of the opinion that the motion of the gentleman from Worcester is in order.

Mr. KNOWLTON. I do not propose to revive the discussion upon this subject. The matter of the judiciary has been ably and thoroughly discussed by the Convention, and I doubt not that the whole subject is thoroughly understood by every delegate upon the floor. Two propositions have been laid before the Convention upon this subject. One of them was a proposition containing the elective principle, providing that all judicial officers should be elected by the people. That proposition has been rejected. The other proposition was for the appointment of judges for a period of ten years. That proposition has been rejected also; so that the Convention has thrown itself back upon the Constitution, in

respect to this matter, as it now stands and has always stood. It seems to me that the Convention, by the votes taken, has reached a conclusion, which, if I understand public opinion, ought not to have been taken; and I move this proposition with a view of deciding whether the Convention has reached a conclusion by which it is willing to abide. I should have been glad, for one, if we could have carried the elective principle; for I think it is demanded by a great portion of the people. Certainly it is in my own section of the State, if I am any judge of the public opinion of that portion of the Commonwealth which I have the honor, in part, to represent upon this floor. If I cannot carry that principle, I desire to approach as near as possible to it. This proposition varies from the other in one particular. It provides for the appointment of judicial officers, but it varies from the other in the limitation of the tenure, and in the confirmation by the Senate. The former was for a period of ten years; this is for the period of seven years. I offer it as a compromise between the two sections of the Convention—those who are in favor of the election of judges, and those who go for the appointment of judges for a period of ten years. I think we are in duty bound to present some proposition upon this subject to our constituents, upon which they can act, to say whether they desire that the Constitution shall remain as it is in regard to the judiciary, or whether its basis shall be reorganized. As I said in the beginning, I do not move this proposition with a view of reviving discussion upon this subject, but simply to test the sense of the Convention whether they are willing to go home to their constituents and leave the Constitution as it is in this respect, or present another proposition for their consideration.

Mr. ADAMS, of Lowell. I move that when the question is taken upon the proposition of the gentleman from Worcester, (Mr. Knowlton,) it be taken by yeas and nays.

The yeas and nays were ordered.

Mr. DANA, for Manchester. The reason given by the President of the Convention yesterday, for his casting vote upon the subject of the plurality system, struck me as a very judicious one. He said, that it was not expedient to submit to the people of Massachusetts a fundamental change, which could be carried in this Convention only by a casting vote. The Convention is aware that last week a very full and able discussion upon the subject of the elective judiciary was voted down by a majority of over one hundred. A proposition more likely to be carried than that of the gentleman from Worcester, for a ten years' term, and not varying from it in principle, was lost by a majority of two votes. Every gentleman must be aware, that whether this proposition of the gentleman from Worcester be lost or carried, it must be by a small vote, with great difference of opinion, without a previous public demand, and without an issue raised before the people. I ask if it is well for us to submit a proposition to the people under such auspices? Besides, if the Convention will allow me, I will suggest, as a member of the Committee upon the Revision of the Constitution, and I think—and every gentleman in the Convention will agree with me in it—that it will be necessary to submit our Constitution to the people as an entirety. We desired, if possible, to submit it to the people in parts, in single propositions; but the farther we have gone in our labors, the more we are satisfied that it must be submitted to the people as a whole. We have the Constitution of 1780, a great part of which is already inapplicable to the present state of our affairs. We have the amendments of 1820, and we have a whole series of amendments since 1820. And now we shall have some twenty or thirty amendments scattered all over the Constitution, striking at every part of it, which are still to be submitted. The result will be, that you will have the smaller Constitution of 1780, with a series of amendments running through the time of three generations, dangling on the end of it, so that not only citizens unaccustomed to legal investigations, but lawyers themselves, would not be able to understand the Constitution without the utmost study. You will have amendments piled upon amendments. And then, too, when we come to examine the resolves which you pass here, we find that a single resolve of three lines will require the rewriting of the Constitution in several places. The sixth chapter, for instance, must be rewritten in almost every section, and four sections must be stricken out entirely. I fear you will find it impossible to submit such a Constitution to the people in any other way than as a newly-arranged, symmetrical instrument, to be adopted or rejected as a whole. If this proposition of the gentleman from Worcester, (Mr. Knowlton,) is adopted here, you cannot give to the people of Massachusetts an opportunity to vote upon it, but it must go to the people with all the other propositions, and I submit to that gentleman as a matter of good faith, whether it is proper to cover up in the Constitution, without an opportunity to vote upon it separately, a fundamental change, for which the people of Massachusetts have never asked, as to which an issue has never been raised, and upon which the Convention is about equally divided? Our time is important to us. If we are to reconsider propositions passed

upon here, reëxamine and reconsult, bring parties again to a vote, and shift the balance one way or the other by measuring casts, we shall never come to a vote. I am willing to abide by the decision of any question of which I am in favor, when it has been lost. I am willing to abide by the decision on the plurality question, and not to trouble the Convention with my proposed amendment, unless I find a general disposition to open the question again. I therefore move to lay the proposition of the gentleman from Worcester, (Mr. Knowlton,) upon the table.

Mr. BUTLER, of Lowell. That is one of the matters which I should like to discuss, and I appeal to the gentleman for Manchester, if he thinks it is fair to make that motion? If he will withdraw the motion, I will renew it.

Mr. DANA. The objection will be, that the gentleman from Lowell would discuss the merits of this proposition, and I would not.

The PRESIDENT. The Chair would suggest, that the motion carries the resolution and amendments, all together.

Mr. LORD, of Salem. I would inquire of the Chair, if the motion made by the gentleman for Manchester, to lay the amendment of the gentleman from Worcester upon the table, if adopted, carries anything with it upon the table, except the resolution which is to be amended?

The PRESIDENT. The Chair understands, that it carries with it the fourth resolution.

Mr. DANA. I understood the Chair to say, that it carried the whole. Then, if it only carries the fourth resolution with it, I adhere to my motion.

Mr. ALLEN, of Worcester. I would ask the Chair, if a single resolution, a part of a series, can be laid upon the table, without laying the whole series upon the table? If you lay one portion of a resolve upon the table does not the act of necessity carry the whole there?

The PRESIDENT. The practice in considering a resolution of this character, is to take it up and vote upon its several parts, separately, if such a desire should be manifested on the part of any member. A motion is made to amend one of the series of resolves upon this subject, which the Chair does not understand, has any connection with the rest; and the Chair has ruled in this matter, according to the practice which has been adopted here, of considering resolutions separately.

Mr. EARLE, of Worcester. It appears to me, according to the recollection I have of legislative proceedings, that in a proposition of this kind, you cannot lay any portion of a report or bill upon the table, without laying the whole upon the table. You may take up a report and consider it in detail, but you cannot take one part of a proposition and lay it upon the table.

Mr. HUBBARD, of Boston. I rise to a question of order. I believe the only motion pending, is to lay the amendment of the gentleman from Worcester upon the table, which I understand is not a debatable motion. The Chair has ruled upon the question, and no appeal has been taken.

Mr. HOOPER, of Fall River. I wish to make a motion to amend the second resolution, which I believe will take precedence of the motion made by the gentleman for Manchester, according to the decision of the Chair made a few days ago, that a motion to amend a previous section took precedence of a motion to amend any other part of a resolve.

The PRESIDENT. If the gentleman will withdraw his motion for a moment, the Chair will state, that upon reflection, he is satisfied that his decision is not correct. When the gentleman for Manchester made his motion, the Chair supposed it would necessarily carry with it the whole question; but the suggestion of gentlemen, that the practice has been to consider these matters separately, inclines me to the opinion that it would only carry with it the fourth resolution. But, no motion being made to consider them separately, the Chair rules that the motion to lay the amendment on the table, carries the whole with it.

Mr. DANA. I made the motion, that the question be taken on the resolution separately.

Mr. BUTLER. I rise to a question of order. The first motion of the gentleman for Manchester, was to lay the amendment on the table; and afterwards asked to have the vote taken separately.

Mr. HOOPER. I would inquire whether my motion, being for an amendment of the second resolution, does not take precedence? I believe that was the decision yesterday.

The PRESIDENT. The Chair is of opinion that it does not. The whole of the resolutions, being at the time the motion was made under consideration, the motion to lay on the table carries the whole with it. The simple question is, on the motion to lay the amendment on the table.

Mr. DANA. I rise for information. The gentleman from Worcester, (Mr. Knowlton,) did not move an amendment to all the resolutions; but he moved an amendment to the fourth resolution. The Chair states, that if I move to lay that amendment on the table, it carries the whole of the resolutions with it. That must be on the supposition that the amendment of the gentleman from Worcester, applies to the whole subject. I then withdraw my motion to lay the amendment on the table, and move for a division of the subject,

so that each question may be taken separately, and then the question on the amendment offered by the gentleman from Worcester, must wait till we come to the fourth resolution.

The PRESIDENT. The whole question was pending. The question was on ordering the whole of the resolutions to their final passage. The gentleman from Worcester moved to amend, when that motion was pending, and the gentleman from Manchester moved to lay the motion to amend upon the table. The Chair rules that if that motion be carried, it carries the whole question, and lays the whole subject upon the table.

Mr. DANA. I have withdrawn my motion to lay the motion to amend upon the table; and I call for a division of the subject, so that the question may be taken separately.

Mr. BUTLER. That call, of course, will be heard at such time as it can be done, by parliamentary rule. I do not propose to speak upon the division of the question. Any member has a right to call for a division of the question when a vote is about to be taken.

Mr. GRAY, of Boston. I rise to a question of order. I understand that any member has a right to call for a division of the question at any time. I understand my friend for Manchester has called for it now. I beg the gentleman now speaking to understand that I do not oppose any latitude being given, but I understand they are divided.

The PRESIDENT. The gentleman for Manchester calls for a division of the question now. Any member has that right; and when the question is put, it will be upon the first resolution; but the whole question, and all the resolutions are open for discussion.

Mr. BUTLER. That was precisely the way I understood the matter; and I do not think the judges will save their lives by parliamentary tricks and manœuvres. In my judgment, if the judiciary of Massachusetts stands on no firmer foundation than mere parliamentary rules, the quicker it is tipped over the better. I propose that this question shall be met fairly, and on its merits. I wish, now, to disabuse the mind of the gentleman for Manchester, of one or two errors which he put forth, and in which he seemed to wish to carry the Convention along with him. The first is, that that vote heretofore given shows any result like that which he stated. He says, we must not touch this subject now, because the President said, very properly, that where the votes are pretty evenly balanced, it is well not to make any great change in the Constitution. So I agree, and so I would agree, in the application of it to this case, if the premises of the gentleman were correct. But I know of many men who are in favor of an elective judiciary, and who are in favor of the abolition of the life tenure, in some form, who voted with the gentleman for Manchester the other day, and against the tenure for ten years. And why? Because they thought it not enough. I can put my eye on many who voted against the ten years' tenure, because they thought it was not all they wanted; because they thought it did not crack the old shell widely enough.

But this proposition of the gentleman from Worcester, commends itself to my judgment. It has two elements in it that I approve. The one is an appointment for a given term, holding the judges responsible to the people; and the other is, that the appointment shall be confirmed by the Senate, and the Senate is to be elected by the people; in like manner the Senate of the United States has a confirming power. Again, the appointment has to lie seven days before it is confirmed, so that we can know who is nominated before he gets into an office for life. Aye, Sir, I know judges, and I could call names, if I was provoked to it, who, if their nomination had lain over seven days before the Senate, would have stood as much chance of being confirmed, as they would of being elected, if the question had gone to the people; and that is putting it strong enough. But the difficulty is, they are appointed; it is done in the Council-Chamber, and I do not propose to interfere with the Council now. But it is done in the Council-Chamber, and nobody knows who the judge is to be, until he is a judge, and there is an end of it, so far as getting at him is concerned, except by impeachment. And if he knows just enough not to do any great wrong, or if he does not commit any flagrant outrage, he can go along, and nobody can interfere with him. I have had my attention specially called to this matter by an article which I find quoted, with a great deal of approbation, in a leading political newspaper, which goes in strong for the life tenure of the judges. I mean the *Boston Atlas*, which meets the approval of the conservative portion of this Convention. And, as though that was not enough, it is copied from the *North Adams Transcript*, which I commend to my friend from North Adams, (Mr. Dawes,) as being under his particular jurisdiction. It seems that a man by the name of Howe, has been appointed down in Haverhill, for a judge of probate. Now the Whig papers defend that appointment. What is the reason? I will read the article, as it is short:—

"N. S. Howe, of Haverhill, a member of the

State Senate, has been appointed, by the Governor, a Judge of Probate for Essex County, in place of Daniel A. White, resigned. This appointment has given rise to some dissatisfaction, and intimations are thrown out, in some quarters, that it is an injudicious one. It would be strange if, in every instance, the governor should be so fortunate as to make the best selection that could be made. But in this instance, we have no hesitation in saying that we believe he has made, under all the circumstances, the best appointment that could be made from among the applicants."

Now comes the reason:—

"Mr. Howe is a stirring, active young Whig, and we believe his appointment, (and we think our sources of information are tolerably good,) will give more general satisfaction to the live, moving Whigs of the county, than that of any other man mentioned for the office. We suspect the mournings, if traced out, will be found to come from interested, if not disappointed, persons, who, until they have manliness enough to back up their insinuations by something tangible, or put their hands to paper, as they have been invited to do, had better say less."

Here is a man who is to settle the estates under the beautiful system which the gentleman for Manchester is so anxious to retain; or if he cannot remain there for life he is to remain till he turns old fogy, which is the next step to death.

Mr. DANA. He holds his office only three years.

Mr. BUTLER. Aye, but it would be for life if the gentleman could have his way. True, we have made the judges of probate elective once in three years. Sir, I thank God we have got a chance at that young Whig, in the county of Essex, in about a year. This is the life system, and these are the reasons given when there is dissatisfaction manifested, when the men of the county say we do not want him. How is the appointment defended? On the ground that he is a live, active young Whig. And that is endorsed by a newspaper in the western part of the State, which I have heard is edited by one of the Executive Council, and then reëndorsed by the *Boston Atlas*. Is this right? Suppose we had put that man before the Senate. What would have been the result? Would he have been confirmed for *that* reason? I grant that we must go to appointments; I grant that is the best which can be done now; because, I am sorry to say, we cannot have an elective judiciary. Let there be five more, or ten more—one in each county—of such appointments, and that would settle the question. But the motion of the gentleman from Worcester exactly meets my difficulty. We have by that an appointment once in seven years, and then we have the nomination lie over seven days; and if the people are dissatisfied they can go to the Senate and have an understanding upon the subject after the appointment has passed the ordeal of the Council.

A word as to what was said by the gentleman for Manchester, who, although he said he did not argue the question, yet—with an adroitness which does him honor as a member of a somewhat adroit profession—still put forth the strongest argument which lay in his mind. He says we cannot put the Constitution to the people by piecemeal. I agree with him in that; we cannot do it. I was afraid it would be done. For there is very much of my success in my profession depending on the adoption of this Constitution, because I do not know what will be visited upon me from the judges, because I have laid my unhallowed hand upon the judiciary. But I am willing to take the risk, for I have been among the people since this matter came before the Convention, and I understand how they feel since I have seen them, and since this Convention has promulgated the idea that the people were not to be trusted with the election of the judges. That fell upon the people of the Commonwealth like a cloud, and no man, of all those I have met, except those in the ranks of conservatism, but what said: is it possible that the Convention has taken such a step? And those steeped in conservatism turned up their eyes, and said: "Well, you are a good reformer, but you are afraid of the judiciary." The laymen here know whether this is true or not. We could have carried that question of the election of the judges if the lawyers had not been a set of cowards. You were afraid of the judges, it is said, and you wanted to plaster and gloss over the matter. That is the way they speak outside of us. But I want it understood that I am not afraid of the judiciary. I am not very anxious on that point; my works may speak for me.

Now, we come to the people, if we sustain this amendment, and we say to the people, your judges shall be made amenable to you, once in seven years, through the Governor elected by you, and through the confirmation of a Senate elected by you. I ask gentlemen if they are not ready to put this into the Constitution, as a whole? In my judgment, it will carry with it three or four other measures which have not quite come up to the expectations of the people. I believe in the effect of the popularity of this measure. I may be mistaken; but I am not mistaken about the feeling in the Convention. The feeling here, I have no doubt is, that an elective judiciary would be best. But there is a little distrust of the people. Let us lay aside this distrust, and put

the proposition to them, and when we do it we shall get the response.

There is one thing which I wish to state, and I challenge contradiction in regard to it: that in every instance where the proposition to either elect judges, or to appoint them for a limited time, has been submitted to the people, with either proposition as a separate proposition; the proposition to elect the judges has received more votes than any other which was put to the people at the same time.

There was not a man found in New York to stand up against it at all. Where it has been put separately, even in the conservative State of New Hampshire—and I commend that to my friend from Cambridge especially—where they have been subject to such a state of things that if any State could have been wedded to the life tenure, it should have been that State; there, the proposition to limit the term of the judges, and alter their tenure, was received with more favor than any other proposition, being put separately.

Sir, I have listened to the arguments on the one side and on the other, and I have carefully weighed them in my own mind; and I wish gentlemen to understand that when I voted against the ten years' tenure, I did it not that I loved the life tenure more, but that I loved the ten years' tenure less. It was not because I wanted a ten years' tenure, but because I wanted the tenure of seven years.

There is a sort of magic about the number seven, if I may be permitted to say so. The Jews had a jubilee every seven years, under the Mosaic law, and so should we if we could get out some of our judges. [Laughter.] I could tell you a thousand reasons in favor of seven years, and against ten; but, more than all that, it is the shortest period. I will take occasion to repeat, that I may disabuse the minds of members of the Convention of the impression which might be created by the remarks of the gentleman for Manchester, that the vote indicated the state of feeling. I wonder if in this he included me, for I was one of the one hundred and sixty gentlemen, and I know of several members, who, if they would speak for themselves, would say that they voted the same way, because they thought we did not get enough. They wanted more.

And as the gentleman for Manchester has started this matter of parliamentary tactics and holding us to the rule, I propose, before we get through, to hold that same chalice to his lips. If we carry on these parliamentary tactics, as well as himself, I trust he will not complain.

Mr. DANA, for Manchester. I hope that so important a question as this, affecting ourselves and our posterity in Massachusetts for a great many years to come, will not be prejudiced in this Convention by any consideration of the manner in which the question arises. When the proposition was moved by the gentleman from Worcester, it seemed to me that there were certain preliminary considerations, not touching the merits of this case, that should settle it; and therefore I proposed to get the sense of the Convention at once, by moving to lay it upon the table, and let the Convention decide whether it ought to be voted down. Because, if the motion failed, the whole subject was up for discussion; and if it prevailed, it would show that the Convention did not want to entertain the proposition. I do not consider that a parliamentary *ruse;* it was a parliamentary proposition, and if there were any parliamentary *ruse* about it, the ground taken that this Convention could not decide upon the preliminary question at all, but that the whole question must be decided at once, had much more of that aspect.

I thought the preliminary consideration should settle this matter; that it was not worth while now to enter upon the discussion of the question as to the judiciary, and I wished the Convention to say so; but I have been prevented, by a parliamentary *ruse*, from getting that question before this body; and now we cannot avoid the discussion of the whole question. I do not mean to alarm the House by proposing to discuss the merits of the whole question; but what I have to say I shall say as briefly as may be. And I will remark, in the outset, that I propose to discuss it in a very different manner from that in which it was discussed by the gentleman from Lowell. It seems that the gentleman from Lowell has been out among the people, and he has heard it said that he was afraid, or rather, that the lawyers, here, were afraid, and did not dare to come up to the work. He desires to show that he is not afraid. But, Sir, it is not necessary to amend the Constitution in order to prove that the gentleman from Lowell is not afraid. I think it was decided by the legislature last year that he was not afraid of anything. [Laughter.] I was not here at the time, but I understand that such was the decision. He has shown, farthermore, that he is not afraid by bringing this forward and making his speech. He has exhibited his courage, and no man here doubts it; and it was not necessary that he should have proclaimed it upon this floor. Another thing, which I wish to suggest, is, that this question ought not to be decided by any reference to special cases of appointments. It seems that one Mr. Howe, of Essex, has been appointed to office, and it seems

that some injudicious newspaper has given a very wrong and a very bad reason for the appointment. Now I want to ask the Convention whether they will decide this important question on a mere article from the *North Adams Transcript*—perhaps as good as any other paper—but will you decide upon one paper or upon all the papers in Massachusetts? Will you decide, upon the case of one Mr. Howe, or all the Mr. Howes in Massachusetts? Will you decide it by one judge of probate, or all the judges of probate in the Commonwealth? I trust that we shall put out of the question any newspaper paragraph, or any man's courage, or want of courage. I hope we shall decide this matter upon general principles. Besides, if Mr. Howe's appointment was an improper one, did not the governor nominate him? Whom does the gentleman from Lowell propose shall nominate his judge? Why, the governor—the same officer who nominated Mr. Howe.

Mr. BUTLER, (in his seat). The Senate is to confirm him.

Mr. DANA. The gentleman says that the Senate is to confirm him. That is true; but does he suppose that a Whig Senate will not confirm "an ardent young Whig" like Mr Howe? Does he suppose that that fact would be any objection to him in a Whig Senate? And suppose we had a Democratic Governor and a Democratic Senate, is it not perfectly clear that we should have some ardent young Democratic lawyer [laughter] nominated for judge by this Democratic Governor, and confirmed by this Democratic Senate?

Mr. BUTLER, (in his seat). Not for life.

Mr. DANA. It would be done every year, and that is no better. We should have a series of ardent young Democrats, and there would be no chance for any of them to grow older and wiser in office. [Laughter.] That is all that we should gain by it.

Then it seems that the gentleman is superstitious. With all his courage, he is a victim of superstition. He voted against a ten years' tenure, and will vote for a seven years' tenure, because seven is a sacred number! He says that the Jews had a jubilee every seven years, and therefore he wants a judge of the supreme court for seven years. Now, a superstitious man who reasons well about everything else, seldom reasons well about superstition. And he must remember, when he quotes the Jews for authority as having a jubilee every seven years, that we also read that they had seven years of famine, while they were in Egypt. [Great laughter.]

Mr. BUTLER, (in his seat). That was a curse upon them.

Mr. DANA. Well, I am afraid we shall have a curse upon us, if we follow bad examples. Our ancestors had a seven years' war, which turned out well; but does anybody want a repetition of it every seven years? I am not satisfied with making this change out of a superstitious veneration for the number seven, or for any other reasons which have been given. In sitting here as a deliberative assembly to make great fundamental changes in the Constitution, let us consider the matter seriously, and in a manner becoming the great questions which we have to pass upon. Let me repeat what I said when I moved to lay the resolution upon the table, that I think we had better drop the whole subject. The gentleman from Lowell says, that the vote the other day was not a test vote, for there was a majority of two against the proposition, and he knows of four or more who voted for special reasons, because they could get seven, and could not get ten—persons under the same hallucination about the number seven.

Mr. KNOWLTON. If the gentleman will allow me, I will state that I voted for their election, and voted against the term of ten years; and I did so as a matter of compromise.

Mr. DANA. It seems that there were four then, and that would leave just two in favor of the proposition, or about a measuring cast. How many gentlemen there may be, who follow in the wake of the gentleman from Lowell, I do not know, and I do not believe that he can tell himself; I do not believe that any man can count his adherents in this body—he says he knows of four; but I know of some who voted for the proposition of the gentleman from Natick, for a ten years' tenure, who may vote against the whole thing now, upon the principle which I relied upon when I moved to lay this resolution upon the table; that is, to let bygones be bygones. As I said before, we ought to do so, because we must submit this Constitution to the people as an entirety. I will satisfy any gentleman, who will go into the Senate-Chamber and look over the work which I had the honor to have confided to me by the chairman of the Committee, in making up the parts of this Constitution, that this is inevitable. The gentleman from Lowell says he is of that opinion also. Now, I ask the friends of this Convention, who must be responsible for the success of this Constitution, whether they think it worth while to peril it by referring this question, or by altering our judiciary system? Sir, I think they have got a good deal to do to carry this Constitution. There will be a good deal of hostility to some of the essential principles which we have maintained here; and if in addition to that, we stir up all the feeling in this Commonwealth

by an unadvised change in the judiciary system, it will be a great risk to run, for the people of the Commonwealth are attached to the judiciary system. They have no complaint to make about it. Some lawyers who have lost cases may complain, and may think they have been ill-treated; but the great body of the people do not complain. If you attempt to reduce the tenure of the judges to seven years, you will find a good deal of popular feeling against it.

The argument of the gentleman from Lowell was principally based on opposition to the appointing power. It was based on the right of the people to choose their judges. He says that we have indicated to the people of the State, that we think they are not capable of electing their own judges. He says it fell like a cloud—I am not in the habit of seeing clouds fall where I live—it fell like a cloud upon the people, to hear it said that they could not elect their judges. But, Sir, he proposes to say this again, that the people are not capable of electing their judges, and that it must be left to the Governor and the Senate, for he voted against the amendment of the gentleman from Fall River. Now what kind of answer is that to the popular argument? You cannot get up any popular enthusiasm in favor of the seven years' appointing power. That is out of the question. If the people believe that they have a right to elect their judges, you cannot get up any popular enthusiasm in favor of increasing the executive power.

Another objection which you will have to counteract, when your Constitution goes out to the people, is this: that you will be adding vastly to the executive power and patronage. I ask the gentleman from Natick, and those gentlemen whose names are signed to the report of 1851, saying that the executive power in this State had increased, and ought to be diminished, with what face they can go out to the people and say: "We have increased the executive power seven-fold. Our little finger shall be heavier than our father's loins; for the governor could merely appoint a judge, and, after he had appointed him, he was entirely out of his power for life; but we now propose to give the governor power to appoint a judge once in about ten months?" That will be the result. If you have the seven years' tenure, with the resignations and deaths that will ordinarily occur, there will be a judge to be appointed every ten months. You then propose to add to the executive power and patronage, by giving him the right to nominate a supreme court judge about once in every ten months, and a common pleas judge about as often—two judges every year! I submit to gentlemen, what kind of argument is that with which to go out to the people, and ask them to support your Constitution, when you tell them, we have pretended that we wanted to diminish the executive power, but we have given the governor the power to appoint one supreme court judge and one common pleas judge in the course of every year? The objection will be, that you have put the judiciary under the control of the executive, and there will be no escape from it. Some one of these judges will, every year, be looking towards the Council-Chamber for his fate. No gentleman here can have a case come before the supreme court, without knowing that some one of those judges is looking to the powers that be, for his reappointment. Suppose a political case has arisen —a case in which parties have got mixed up, and suppose the suitor has incurred party odium, will he want to carry his case before such a court as that? Will not that circumstance be a strong objection? Which would you rather do: go before a judge when you knew his reëlection was pending before a million of people, or when his reappointment was pending in that Council-Chamber? The gentleman from Lowell says, he wants to have a chance at that young Whig judge who has been appointed in Essex County. Well, Sir, he does not propose to make judges of the supreme court elective. If he wants to have a chance at one of the judges of the supreme court, how is he going to do it? He must reach him through the executive chamber, if at all. That will be the result. Whenever the gentleman from Lowell wants to "have a chance at a Whig judge," or whenever some Whig wants to have a chance at a Democratic judge, he must do it through the executive chamber. But while this is going on, the friends of that judge will not be idle. They will not submit to have him overridden. They will support him there, and if we have occasion to go there on any public business, we shall find the ardent young Democrats and ardent young Whigs blocking up the lobbies of that chamber, all the while that the nomination of that judge is pending. Well, Sir, after he gets his nomination, he must go to the Senate to be confirmed, and there it will be just about as bad. The same spirit will prevail, and whether he be a Whig judge or a Democratic judge, there will be the lobbying for and against him, and this contest will be kept up by a great many persons, and the influence will be felt throughout the State.

Now, I do not know that I can convince gentlemen in this Convention that that would be a bad principle; but I can tell them that there will be people enough in the State who will think it

a bad principle to make it quite worthy of their serious consideration, whether they will put it into the Constitution, and add that risk to the one they have already run on the subject of the town representation. Now, I put it to the calm good sense of gentlemen who do not feel excited on the subject, who have not been out and had their courage questioned, and got excited; or who have not read newspaper paragraphs and got excited—I put it to calm-minded gentlemen in this assembly, whether they had not better let the thing rest where it rested last night. If you want issues before the people, do something that you said you were going to do when you came here. Introduce the plurality system. It will be popular in the end. Abolish the Council, or adopt some other popular measure. Do something which you proposed to do, and not something which the people never had any idea you intended to do; something that no issue has been raised upon. The people will not feel a great deal of interest in a matter which is to be transacted between a governor and a judge, once in seven years, in that chamber. The people will have no chance here. But once in seven years, the judge, by himself, or his friends, is to lay his case before the governor, and his enemies will lay their case before the governor also. And what do the people care about that? Why, Sir, the people, looking carefully to their rights, will say we would rather have no such doings between the judges and the governor; we would rather have a judge who is responsible only to us by impeachment or by address. As one of the people of Massachusetts, who have more interest in the right decision of cases than I have as counsel—because as counsel, probably, I should gain or lose one-half of my cases, for such is usually the fortune of life; but my life, liberty, property, and reputation, may rest any moment upon the decision of the supreme court—as one of the people, I would rather that there should not be a private transaction once in seven years between the judge and the governor, involving the official life of the judge before whom I have causes to try, and on whose impartiality my client's all, or my own, may depend.

[The gentleman's half hour having expired, the hammer fell.]

Mr. LORD, of Salem. I rise, Sir, not for the purpose of entering into a lengthy discussion of this question, but rather for two purposes: one to take away the pretence which the gentleman from Lowell has laid before the Convention as the reason why the Convention was divided so closely on the vote which was taken last Thursday. I propose to take away that pretence, and to show that every proposition which has been entertained by this House, or which has been presented before us, has met with favor only in proportion as it has approximated the present state of things. When it was proposed to make the judiciary elective for seven years, there were more than a hundred and twenty-five majority against it. When it was proposed by the gentleman from Lowell himself to have them *appointed* for seven years against ten years, there was a majority of ninety-six against it in this House; and the same page which records the vote of two majority against the ten years' tenure, records the vote of ninety-six majority against the tenure for seven years, upon the motion of the gentleman from Lowell himself, for he moved to strike out "ten" and insert "seven" in its place; and eighty-eight gentlemen only voted in its favor; and one hundred and eighty-four against it, as an examination of the record shows; which examination I have made within the last five minutes.

Then, Sir, the gentleman says that this is a new proposition, because it is now proposed that these appointments shall be submitted to the Senate for ratification. Sir, that same proposition was also made, and voted down without a count. There was not a minority sufficient in favor of that proposition to divide the House upon. Now, Sir, I say that that pretence cannot stand here—that this proposition was defeated the other day because the Convention desired a seven years' proposition instead of ten years. Every vote has shown that any proposition has received favor, just in proportion as it has approximated to the present tenure.

Now, Sir, I said that I was not going to discuss this matter; and I only desire to express my preference for the mode of the gentleman from Fall River, over that of the gentleman from Worcester. If the office of judge is to be made a political office, let the people, and not the executive, take care of it. I am willing that the people should elect their judges. I have no fault to find with that. It is only the tenure that I want to have independent. I do not care how they are appointed. I think the people can elect them better than the executive can appoint them; but I want an independent tenure when they are put there; and if it should turn out that either the one term or the other is to be adopted, if a judge is to be appointed every four months—which will be the case if the calculation of the gentleman for Manchester, (Mr. Dana,) is correct—I prefer, infinitely, that the people should make such new judge, rather than the executive. The gentleman for Manchester, according to his calculation, says that there will be, at least, two judges to be

appointed every ten months—one supreme judge, and one common pleas judge—that is, at least, one judge in every five months.

But, Sir, there is an objection to the resolution, which I wish to suggest to the consideration of the gentleman who moved it. This is the final stage of this matter. By a parliamentary rule, which cannot be avoided, except by a suspension of it, if we insert that resolution as it is—and the question now comes up upon it—we must stand by it. There is no mode by which we can change seven years to ten or fifteen years, or to any other period. Having adopted this, and there being no other stage, it must finally stand as it is adopted. Gentlemen should remember that the inconvenience of this sort of thing was felt at the close of the Convention of 1820, when they were obliged to suspend the rules to get out of a difficulty, having inserted a number in a resolution in which the number should have been left blank. I suppose that the gentleman from Worcester would accomplish his object, if he left the period blank; it would, at all events, be quite as well as to fill it with the word "seven." But, still I do not propose to offer any amendment in that respect; because, if I can judge at all of the character of this Convention, inasmuch as by a majority not of TWO, but of NINETY-SIX, this Convention has already determined that they will not have a seven years' tenure. Unless the gentleman from Lowell knows members enough who will turn round with him, and change that majority of ninety-six, his majority of *four* comes to nothing. His little matter of *four* is a very trifling number in this respect, because we are dealing with a proposition that we have dealt with before—a proposition for a seven years' tenure; and that proposition the Convention has voted, by a majority of ninety-six, that they will not adopt; and that is the only motion which can be submitted, according to the proposition of the gentleman from Worcester, and having been thus made, it becomes unalterable.

Now, I desire only to make another observation, so that I may stand right, and it is this: if the gentleman will propose such a tenure of office, so as to make it an object for suitable persons to take upon themselves its responsibilities, and will not permit them at all to be candidates for reappointment, then I will go with him; but I am not willing to make the office of judge a merely political office, so that when they decide, as one gentleman said the other day they decided incorrectly in relation to the fugitive slave law, that caucus resolutions shall say that that decision is wrong, and they must make such a judge as will set the matter right; I am not willing to say that the great party—perhaps the majority party in Massachusetts to-day—shall say: "We have determined that the law for the suppression of tippling-houses, or whatever else it may be, is a constitutional law, and we will resolve it to be constitutional in the same caucus by which we nominate our judge, who must 'accept the nomination, with the resolutions annexed,'" [laughter,] or not at all—because all political men, when they accept office now-a-days, or even nominations for office, must accept with "resolutions annexed," platform and all—[renewed laughter]. I say I do not care what the decisions of a judge may have been, when a party caucus shall have resolved a great question of political law; then the judge who is to receive an appointment or nomination from them, is a judge whose opinions are made for him to his hand before he goes upon the bench, or who is continued upon the bench in consequence of these opinions. Sir, I want a judge to be entirely free from any considerations of this kind. How that is to be accomplished, I do not know; but certainly, to make the tenure of office a seven years' tenure, will not make him independent. If gentlemen will bring their minds to bear upon that proposition, whenever they will show me a mode in which a judge shall fear nothing but God, whenever they have found out that, then I am ready to go with them and vote. But I do not see how that is to be, if he is to be dependent upon any political organization,—because if the governor appoints him for this short tenure, he is as much dependent upon political organization as any officer of the State can be,—I say, if he is to be thus made dependent upon any political organization, the system which proposes it can never have either my approval or my vote.

Mr. HALLETT, for Wilbraham. This subject has been discussed heretofore, and discussed mainly upon one side; there are nearly equal differences of opinion prevailing here upon it. The votes, which have already been taken, have shown a nearly balanced division of opinion. I do not know that anything that I can say, will affect that opinion, one way or the other. I had an opportunity, the other day, of just seven minutes, for expressing, rather what might be termed a sentiment, than of making an argument, upon the life tenure office. I desire to add a few words, to-day, and leave the Convention to decide upon this matter, as to them may seem best. To me, this is not in any sense a question of personal feeling, or private griefs; but a question of principle. I wish it to be considered and discussed without any possible reference to existing judicial officers. Sir, my relations to all the judicial offi-

cers of the Commonwealth—however hard I may have found it in the beginning—are of the kindliest character; and it is impossible for me to entertain any feeling of disrespect towards any of them. I think they sometimes err in matters of courtesy, and in sauvity to counsellors and parties; and from my long experience of the effects of life tenure upon the personal bearing of judges generally, I have believed, and do now, that they need some court of errors to stand behind them; either the elective principle, or the rule of periodical appointment. I, therefore, for one, feel pretty certain that I can lift myself above all personal considerations on this question. Indeed, if I have any difficulty at all, it is the pain I feel—in common, I know, with other gentlemen of the bar, who think with me—at the supposition, in any shape, being entertained, anywhere, that members of this Convention, or any lawyer in it, could be actuated by any personal feeling towards any judge on the bench, in proposing amendments, either to elect judges, or to limit, in appointments hereafter to be made, the old life tenure to a term of years.

When this question first came up, many days ago, I said I was not in favor of a present election of judges, but I was in favor of a limited term for future appointments of new judges, of ten years; and this, I still think, is the only ground we can strongly stand upon, and can carry before the people. I have no question that the election rule is the true one, but it is not expedient to resort to it now. The member from New Bedford, (Mr. French,) demonstrated, that in the present state of parties in this Commonwealth, it would be unwise to run the risk of a fusion of parties who might elect judges for the reason he wanted them elected, namely, because he wanted a chance to choose a judge who would not be such a *coward* as to regard his oath to support the fugitive slave law! And having thus alluded to that rather extraordinary, though not very alarming outbreak from the eccentric member from New Bedford, I desire to say, that in regard to the tenure of office for the judges of the Commonwealth, or any change to be made in it, I have not the most remote idea of referring to any decisions of the courts, or its members, as affecting this question; because, I think we should aim at principle and not at the officers; and hence it was, that if I had had, for a moment, any doubt in my mind as to the propriety of now providing for electing the judges—which I believe, in principle, is right, though I cannot deem it expedient in the present state of things—my mind would have been brought to the conclusion that it was not expedient now to elect judges, by the remarkable argument used by that delegate from New Bedford, (Mr. French,) which was, in direct effect, that you must appeal to the people, in order to induce them to elect judges who are not such cowards as to adhere to their oaths to support the Constitution and laws of the United States, which include the fugitive slave law! I did not answer that remark then, and I do not propose to answer it now; but I mean plainly to meet and repel that principle, or rather perversion of principle, whenever it arises, in this Convention, or elsewhere. And, while I do so, I wish, at the same time, to express my great respect for gentlemen differing from me in regard to the construction of some particular law of the United States, which has made strong party issues, that they have most honorably, with very few exceptions—I believe the delegate from New Bedford, and, perhaps one other, is the only one—refrained from bringing these questions into this Convention. And with the like regard to the harmony and good results of this Convention, while holding very decided opinions upon the other side, I have refrained from alluding to them, unless it has been for the direct purpose of repelling or answering.

Now, Sir, the reason why I think a great proportion of this Convention went against the elective doctrine was, because, as some gentlemen put it, if you had an unpopular law—the fugitive slave law or any other law—which a party wanted the judges to put down, and which they refused to disregard, because their consciences and their oaths would not let them, the party opposed to the law could go to the people and stir them up to a partisan heat, in order that they might elect judges who will violate their oaths! The delegate from New Bedford, (Mr. French,) or any other delegate, who would use such an argument, should know, not only that it is dishonoring the people, but that the laws of the United States are the supreme law of the Commonwealth of Massachusetts, and that all her judges are expressly sworn to regard them as the supreme law of the land. And, hence, if they are applied to, to set aside a law of the United States, they cannot do it, whatever their individual opinions may be upon the subject. Therefore, I say that such a proposition, to elect judges who would violate their oaths, never should be entertained here, and never would be entertained by the people; and moreover, I say, in relation to that very case, and to the conduct of those judges, and of the learned chief justice of this Commonwealth, in it, that the history of judicial actions does not present an instance of more calm, dignified, prudent, deliberate, and judicious conduct or decision, than was shown in that case; and there I leave it.

Now, upon another suggestion in regard to this amendment of a term for seven years, which is proposed by the gentleman from Worcester, (Mr. Knowlton,) and which is so much opposed by the gentleman for Manchester, (Mr. Dana). I desire most explicitly, to enter my protest against an intimation made by the latter gentleman, as if to conclude the question beforehand, and that is, that we should be obliged to take this Constitution as a whole, and put it before the people as such. I happen to be on the same Committee with that gentleman upon the mode of sending the Constitution to the people, and he has no right to make that assertion. The Committee have come to no conclusion, and have made no such recommendation, and there has been no legitimate action upon the subject.

Mr. DANA. If the gentleman will permit me, I will say, that I spoke entirely for myself. I have had no conference with any one, and the Committee have not acted upon the subject. I suppose I stated that I am satisfied, for myself, that no such course can be pursued.

Mr. HALLETT. That explanation is satisfactory; but I would say, if the gentleman cannot frame such a report, I think I can, for I have tried it, and if found necessary, it can be done. The only question of difficulty is arrangement and expediency. If he fails, he has only to transfer it to other hands, and they will see that it is done, if found, on the whole, to be necessary and proper. The idea that we have got to submit this whole matter to the people in the lump with no reservations, is advanced by that gentleman in this debate, I apprehend, for the purpose of affecting this decision. The impression, that we cannot put to the people any proposition upon a doubtful matter, for fear that we shall lose the whole of our labors, has deterred this Convention from doing many things which they believe ought to be done. Why, Sir, when we get through, I fear most that the people will ask us not why we did so much, but why we did no more. And, I want to send some propositions to the people, which will show, that we have done something besides sitting here and voting against propositions. If there is any fear of this proposition, let it be submitted to the people as one of the separate propositions which must be selected out of the whole Constitution.

Now, a few words upon the merits of the subject. We have had arguments here from two of the most distinguished gentlemen—do I say in this Commonwealth? No, Sir. Do I say in the United States? No, Sir; but two of the most distinguished gentlemen to be found anywhere—one of them the most fervid, eloquent, and forcible among the living orators of the world, (Mr. Choate); the other, one of the most distinguished and profound legal professors, whose jurisprudence has ever given distinction to any legal institution in the world, (Prof. Greenleaf). We have also had an able argument for the life tenure, from one of the most eminent judges of this Commonwealth, who himself sat for fifteen years upon the bench of the supreme court, (Judge Morton). Around these three great legal lights have gathered—I hope I may be excused for saying it—the lesser satellites of the bar, who have come to their support. This doctrine of a tenure for life for judicial officers, is sustained by these gentlemen; by distinguished professors; by distinguished advocates at the bar; who are in all possible favor with the judiciary, and whose personal influence is often exceedingly effective in turning the balance of the scale where the argument is doubtful. But, while the bar and the bench thus say give the judges a life tenure, what say the people here? When has a prominent member risen who has supported the life tenure of judges who has not been, or might have been, or is not himself, in some way in the line of succession? Now these learned gentlemen have attempted to terrify this Commonwealth, and the members of the Convention, by depicting the awful consequences of destroying this life tenure. England had it for a great while, before we took it. We have had it for a long time, and gentlemen say, we must continue to have it, or property and person will no longer be safe! Well, Sir, I respect, but cannot sympathise with their fears. When they so solemnly deprecate this idea of a change of the tenure of judicial office, and depict the awful consequences which are to follow, it reminds me of the similar and equally sincere apprehensions of poor, unhappy George III., when on the 5th of December, 1782, he signed that famous message of his to parliament, acknowledging the independence of America. That very pious gentleman said upon that occasion: "I make it my humble prayer to Almighty God, that America may be free from those calamities which have proved how essential MONARCHY is to the enjoyment of *constitutional liberty!*" When Burke was commenting upon that message in parliament, and came to that passage, he threw the whole House into a roar of laughter by one of his dashes of ridicule, in which he described the king "in this marvellous exhibition of piety, falling upon his knees to deprecate the awful consequences likely to result to America from the want of monarchy;" and he might have added, such a monarch for life as George III.

Now, I think we are in about the same condition here, seventy years after that event, touch-

ing judicial life tenures. The wisdom and foresight of pious George III., must be still living among us, when wise men stand up here in the last half of the nineteenth century, and pray Almighty God to save Massachusetts from the awful consequences which will follow, if she does not have a life tenure for her judges! There is just as much reason and common sense in the one as in the other apprehension, and the progress of the age has already shown just as much truth in these modern fears about the judiciary, as there was in the lamentations of George III., about America and monarchy, and constitutional liberty.

Sir, as to this matter of taking our lessons of government from England, or of what England has given us—for it seems that there are gentlemen here, as well as elsewhere, who think we cannot have anything which England has not given us—I say England has given us nothing good that we have not improved, and I say, as to the life tenure of judicial officers, which we derived from England, there was some reason for it there, where the sole power is in the hands of the king; but there is no good reason for it here, where the power is in the hands of the people. The courts there, may, by being independent of the king, protect the people, but they would do all that a great deal better, if elected by the people, in spite of the king. With us we want judges to protect the people against the legislature and the executive, and not against the sovereign power.

The gentleman for Marshfield, (Mr. Sumner,) said the other day, upon another topic, that England had given us five great institutions, and he went on and enumerated them. One, was the doctrine that the atmosphere of Great Britain could not be breathed by a slave! England give us that doctrine? No, Sir. England gave us exactly the opposite doctrine. England gave us slavery, and fastened it upon us. I will tell that gentleman what five institutions England has given to us.

England gave us *religious persecution*. Well, I thank her for that, for it planted our colonies.

England gave us *taxation without representation*. I thank her for that, for it achieved our independence.

England gave us *insult to the new States*, and sought to crush them, by commercial restrictions. I thank her for that, too, for it gave us our glorious UNION.

England gave us *search on the high seas*, and impressed our seamen. I thank her for that also, for it forced us into the war for a second independence, a moral, intellectual, commercial and manufacturing independence, as important as any we had achieved over the mother country.

Lastly, England gave us the institution of slavery, and for that, I do *not* thank her. Instead of an atmosphere in which a slave could not breathe, she poisoned the atmosphere of the colonies, by importing slaves, compelled to breathe it. And, Sir, but for England, with her cupidity and her slave-trade, we never would have had this question raised and agitated here as a discordant element in free institutions.

Let not the gentleman for Marshfield, (Mr. Sumner,) come here with eulogies upon England and English aristocracy, which are to go back to that country, the great oppressor of labor, to be taken up by those who frequent the house of "My Lady Sutherland," to abuse America, and superciliously thank God they are not like these publicans! I want no such sympathy from England. These very philanthropic individuals, these high lords and ladies, who take hold of this sore that they think exists under the general Constitution of our country, do it for what? Not that they love America, but because they would inwardly exult to see anything festering in the heart of America, which they think—but, thank God, falsely believe—will impair, if not destroy, its free Constitution; I have no faith in such sympathy from England for America. I look for true sympathy from her masses, her great commoners, and not from her sickly aristocracy.

Then, Sir, as it regards this question of the life tenure of the judges, which we have derived from England, what do we propose? Why, we propose that we shall no longer follow the principles or practice of England, upon this single question, just as we long ago ceased to follow her doctrine, that the executive office should be held for life. I do not know of an argument in favor of a judicial tenure for life, which is not equally strong in favor of an executive tenure for life. Now, Sir, I am not going to England for any such institutions. I will take her common law doctrines, as far as they go, and improve upon them; but, Sir, I would prevent the judges in this country, whenever I have any power of doing so, from having that sort of independent life tenure which the twelve judges of England had, when, on one occasion, they were used to carry out, for the government, the doctrine of constructive treason. There was a law in England, as there is in this country, that there must be two witnesses to the same overt act of treason, in order to convict a citizen of that crime. The simplest proposition in the world, because otherwise there is the oath of allegiance in the person charged with the crime on the one side, and the oath of a single man that he has violated it on the other. What did these twelve judges, holding their tenure

for life, do? The king wanted to convict certain subjects of treason, but the law was in his way. The king called together the twelve judges of England, and submitted this proposition to them; and I ask the attention of the learned professor from Cambridge, (Mr. Greenleaf,) to it: "If J. S. buy a knife to kill the king, and it be proved by one witness that he bought a knife for that purpose, and another comes and proves he bought such a knife, are they two witnesses to one overt act sufficient to prove high-treason?" And the learned judges all said "yes," in presence of all the king's counsel! Now tell me not of judicial independence, and judicial impartiality, when it comes in contact with political power in England! Their Holts, and Scroggs, and their Jeffreys, and Norburys, were judges for life, and the bloodiest annals that stain the pages of history, mark the track of the judicial decisions of English judges of life tenure.

Those were decisions in the courts of common law, where all the judges are appointed for life. But let us look into the court of chancery, the great equity tribunal of England. Have gentlemen thought it worth while to tell us by what tenure the Lord Chancellor holds his office? No. Did the gentleman from Boston, (Mr. Choate,) ever think of it? If so, why did he not inform us how long the Lord Chancellor of England holds his office? Just as long as the ministry themselves, and no longer. He is appointed upon every change of the ministry, and changes with every political change in the administration. And yet, more property rights, and more great questions between parties, involving the guardianship of all wards and minors, and the settlement of trust estates, passes through the court of the chancellor, than through all the other courts of England.

Mr. DANA, for Manchester. If the gentleman will permit me to interrupt him, I wish to say that England has felt the importance of no longer having the Lord Chancellor a political judge, and they have already passed, or are about to pass, a bill to give him a life tenure.

Mr. HALLETT. They are just about doing that the gentleman informs us, and I inform him that we are just about going the other way. That is just the difference in progress and freedom, between the old and the new world. All the old world has gone back to utter despotism. The heel of the tyrant is on every neck in Europe, and England is about to follow in the same course; and we are asked to retain the life tenure of judges, because England may, possibly, apply it to the only judge she has without it. No, Sir; that is no argument, but the reverse, for the United States of America. Where is Hungary, and her free Constitution? Trampled down in the dust of the earth, and trampled down, too, by this dogma of life tenure of kings, and lords, and judges, and other officers and instruments of despotic power. It is time we had done looking in this new world, to the old, for examples to guide us in government. We have good precedents in our own country, and we need not go to Europe for them. Let us rather take such as we have here, and see how they stand. There are fourteen States in this Union in which the judges are elected by the people; ten States in which they are appointed; and but seven States in which they hold a life tenure. And which are those seven States? New Hampshire, who has never changed her Constitution; Massachusetts, who is about to change hers, I trust, in this matter; Connecticut, who has not changed hers since 1818; North Carolina and South Carolina, with their old colonial Constitutions; Delaware, the least considerable State in the Union; and Alabama, in her Constitution of 1819, the only new State that has fallen into this old usage of monarchical government. In twenty-four States of this Union, there is a limited judicial tenure, averaging in the whole but six years. The four largest States elect their judges—Pennsylvania for fifteen years; New York and Virginia for eight years, and Ohio for five. Massachusetts may safely stand on ten years, where I hope to see it placed, at this time. Now, Sir, is there any danger in following these examples in future appointments of judges?

Let me hasten to say, in conclusion—for my time is just running out—that while I would divest myself of every personal consideration in this matter, all I desire is, that in conformity with every fundamental principle of popular government, the judges shall be made accountable. Give me accountability for the judges of all our courts to somebody, at some stated time, in some way, and I shall be content. I prefer to begin with the limitation of ten years, but I must take the seven, if it is that or no limitation. The cry of the people everywhere, concerning their judges and rulers is, give us accountability!

Sir, accountability is the great moral gravitation, without which heaven and earth would fall asunder! Wherever there are human agencies, wherever there are intellectual beings, there must be accountability. Without accountability to his God, man is but a beast; without accountability to the public will, the ruler is but a despot; and without accountability to the people, the judge, with his life tenure on the bench, is but a modified tyrant.

[Here the hammer fell, at the close of the half hour, as the speaker took his seat.]

Mr. FRENCH, of New Bedford. Mr. President: I have been much interested in this discussion, and from what I have heard, I am satisfied that, since the subject was up before, there has been quite a change of opinion among the members of the Convention. I have no doubt that if this discussion were to continue a little longer, we should have a majority in favor of the amendment of the gentleman from Worcester; and if the question could be postponed, and come up a few days later, I presume we should even have a majority in favor of electing judges by the people. Sir, what is the reason of this change of opinion? Since the subject was discussed before, gentlemen have been home to their constituents, and they have come back with new light as to the opinions of the people, upon this subject. If they would rise in their places, and testify what they have seen and heard, many of them would tell us that their constituents have said to them, "Give us an elective judiciary."

Sir, as I said on a former occasion, I am for a system that shall bring the judges a little more in sympathy with the people. We were told here the other day, by the distinguished member from Boston, (Mr. Choate,) of the purity of the judges of this country, and Lord Mansfield, and the common law of England, were not only alluded to, but eulogized. Sir, have we Mansfields upon the bench of our supreme court? Have we even apologies for Mansfields there? If we had, how would human rights stand affected by the change? It will be remembered, that Lord Mansfield liberated Somerset, and caused the shackles to fall from the limbs of every slave in Great Britain, against the influence of the government of England, and in favor of the impulses of the people. If we had the common law of England, and Mansfields to administer it, how long should we be compelled to look upon human slavery in this country?

There was a case a few days ago in this city, illustrative of this point: A man appeared in this harbor, on board the brig Florence, from Wilmington, N. C., just escaped from the land of whips and chains, panting for liberty, which he had perilled his all, yes, even his life, to obtain, and when he was just about to touch our soil, and was in imminent danger of being seized, and sent back, could his friends obtain from the justices of your supreme court, a writ of *habeas corpus* to prevent his being returned into slavery, "without due process of law?" No, Sir; but they took out a writ of *habeas corpus* from the people, and a writ which put him in possession of his rights. While the captain, after nailing him up in a box, was looking round after your commissioners, your marshals, and the officers of the government, to seize him and bind him, and carry him back to slavery, he took an appeal to the people. They granted a writ of *habeas corpus* upon which he was taken ashore, and set at liberty. He is now, I hope, in Queen Victoria's dominions, rejoicing, not as the gentleman for Manchester, (Mr. Dana,) said the other day, that he had been tried before a court of independent judges—as independent and impartial as the lot of humanity will admit. No, Sir; but that he had obtained a writ of *habeas corpus* from the people, by virtue of which, he was beyond the reach of his oppressors.

Sir, I regretted exceedingly, to hear it said the other day, by a gentleman in this Convention, the learned gentleman from Cambridge, (Mr. Parker,) in whom so much confidence is reposed, in matters of law, that while the fugitive slave law was upon our statute books, it was the law of the land, and it must be obeyed. Oh! how it thrilled through my bosom. Where is the man in this Convention, who, if he had stood upon the shores of our harbor when that poor panting fugitive landed, to whom I have referred, if the officers of your government had been there, ready, but unable to subdue him, and called upon him to assist in seizing him, would have done it?

Sir, I put it to every gentleman in this Convention; the gentleman from Cambridge, and the gentleman for Wilbraham, in particular: would you have assisted the marshal, had he needed, and commanded your services, to have dragged that fugitive before a ten-dollar commissioner, (Mr. Curtis,) who would have doomed him to the chains of slavery?—"*one hour of which, is fraught with more misery than ages of that which our fathers rose in rebellion to oppose.*" I ask any man who believes in the doctrine that a law must be observed, because it is spread out upon your statute book, whether he would have helped to have sent that man back to slavery? Will any man rise in his place and say, yes? I pause for a reply. No, Sir; no one will do that, because that man is not in this Convention, and I thank God that he is not.

Now, Sir, I have not a word to say against the judges of our supreme court. I do not believe, as I was represented by the gentleman for Wilbraham, to intimate, the other day, that judges of the supreme court should violate their oaths. I do not wish to elect judges who will violate their oaths. Oh no, Sir; but I do want to elect judges who shall be near enough to the people, to remember, and realize, too, that men have inalien-

able rights, and who, when a man comes before them, and applies for his liberty—when he comes and asks for his rights, to which he is entitled under the Declaration of Independence, the Constitution of the United States, and the Bill of Rights, and laws of the Commonwealth of Massachusetts—will grant them to him, and not turn their backs upon him, without making any reply. I want supreme judges who can remember that the Constitution of the United States, says this:—

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law, or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor shall be due."

No person shall be "deprived of life, liberty, or property, without due process of law." Which means trial by jury. And, farther:—

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

I want them to remember that before such person can be sent back into slavery, it must be shown that such service or labor was due to the party claiming it, under the laws of the State from which he comes. Here, is where I claim the Constitution of the United States is violated in its most essential provision. I want it to be shown, that the service or labor of a slave, is due to the party claiming him, by the laws of the State from whence he has escaped. It cannot be done. There is not a single State in the Union that has upon its statute book a law making any man or woman a slave. And when they come to the State of Massachusetts and claim the right to take a man from our soil, they must first show, according to the Constitution of the United States, that he owes service or labor, under the law of the State from whence he has escaped. This must be done, too, by "due process of law." No grab game, No snap-judgment. They know they cannot show it; and, therefore, it is that your odious, abominable, detestable, unrighteous, inhuman, heathenish, barbarous, heaven-daring, man-debasing, woman-killing, demon-pleasing, unconstitutional fugitive slave law was made, [laughter,] which is no law, and should be trampled under foot by every freeman in the land. Lord Brougham has said:—

"There is a law above all the enactments of human codes, the same throughout the world; the same in all times; such as it was before the daring genius of Columbus pierced the night of ages, and opened to one world the sources of power, wealth, and knowledge, and to another all unutterable woes; and such as it is this day. It is the law written by the finger of God on the heart of man; and by that law, unchangeable and eternal, while men despise fraud, and loathe rapine, and abhor blood, they shall reject with indignation the wild and guilty fantasy that man can hold property in man."

Sir, when congress passed that law, those men who voted for it knew it would be no law. They knew it was in violation of the Constitution of the United States. They knew all this. Will any man stand up here and deny it? Why did they make it at all? Because they—the slaveholders—knew they could not come to Massachusetts, and other free States, and take a fugitive slave under constitutional law, for constitutional law required them, in the first place, to show that the fugitive owed service or labor, under the law of the State from whence he had escaped, and they could not show that, because no State has enacted any such law. Therefore it became necessary to pass a law in violation of the Constitution of the United States, in order to allow them to come North and take up fugitives, and carry them back to slavery. It could only be done in violation of the Constitution of the United States, in violation of the Bill of Rights, and of the Constitution of the Commonwealth of Massachusetts, and of every free State in the Union.

Sir, how was it in the case of Sims? The learned gentleman for Manchester tells us he was one of his (Sims') counsel in that case. The Constitution of the United States and the laws of this Commonwealth were disregarded entirely.

A member (interrupting) here asked what was the question before the Convention. [Laughter.]

The President said it was upon the amendment of the gentleman from Worcester.

Mr. FRENCH, (resuming). And the gentleman for Manchester remarked, although he lost that case, yet he rejoiced that it was brought before a court of independent judges—as independent and impartial as the "lot of humanity would admit." Now, I ask that gentleman, supposing he were to change sides for a moment, and Sims were the lawyer, and the learned gentleman for Manchester the client, would his rejoicing, think you, have been the same? If it would, then when he arrived upon the rice plantation, down in Georgia, he would have lifted up his prayer, morning and evening, thanking God that although he was condemned to slavery, he had been fairly tried and condemned by a judge who was as independent and impartial as the "lot of humanity would admit." [Great laughter.] If he would have done that, he would certainly have exhibited more of the Christian spirit than

it has been my lot to fall in with yet. No, Sir; I tell you he would have offered up an entirely different prayer. If he had had any thanksgivings to render up, they would have been of an entirely different character. I think he would have been apt to have repeated the 109th Psalm and 8th verse: "Let his days be few, and let another take his office."

Sir, there is not a man in this Convention to-day who can deny that Sims was not entitled to the same privileges of life and liberty that we are.

A poor trembling fugitive came to my door the other day, having been five long weeks under the forecastle floor of a schooner, in close confinement, in coming from that land of sighs and groans; and while the gentleman for Manchester was offering up his thanksgiving for independent judges, and praying that they might continue to be appointed for life, instead of appealing to them, that same writ of *habeas corpus* was applied for and issued by the people, who took him safely off, and he is now, I trust, in Canada.

Who does not rejoice at it? Does any one wish to help catch him? The aforesaid fugitive slave law must be enforced, must it? I desire to bring the case nearer home. The way to test a principle and gentlemen's professions here is to take an extreme case. While I am speaking, for instance, suppose a poor fugitive woman, with her little one in her arms, enters yonder door, rushes down that aisle, and undertakes to crawl in behind your chair, Mr. President, for protection, followed by her husband, and at the other door in come the officers of the law in pursuit. The marshal of the United States, with his insignia indicating his office, comes down near your desk, while the husband of the poor woman stands between her and that officer. You all sit here, and of course, I stop speaking, while that husband stands up in all his manhood, and says to the officer and posse, thus far you shall come, and no farther, upon your peril; and he produces his weapons of defence, which convinces the officer that he is too much for him. The officer calls upon you, gentlemen, in this Convention, by virtue of, and in obedience to the fugitive slave law, in the name of the United States of America, to assist him in seizing, binding these fugitives, and taking them before a commissioner. Would you do it? That is the question. No! not a man here would lift his hand to assist that officer, notwithstanding that aforesaid fugitive slave law commands all good citizens to assist in its execution. Then away with the idea that whilst it is upon the statute book, it must be obeyed and enforced. Spit upon it—trample upon it, rather than obey and enforce it The attempt never would have been made to execute the law in Massachusetts, had it not been for a particular political purpose, and I do not believe it will be attempted again very soon by the authorities of the city of Boston, or if attempted, that it will be backed up by a corps of fifteen hundred of her most wealthy and influential merchants.

I wish to say one word more in reply to what was said of Lord Mansfield. He struck the fetters from every slave in Great Britain, and all we want here is judges like Mansfield. Had we one or two Mansfields on the bench of the supreme court of the United States, then, when men brought their fugitive slave cases before that court, they would set the slaves free. I remember reading that there was a judge once, who, the first time the question was brought before him, set the slave free, and with him every slave in this Commonwealth. He was a little nearer the pattern of Lord Mansfield than any judge you find now a days. There was a judge in Vermont, who, when a similar case was brought before him, required a bill of sale from the court of Heaven, to prove one man's title to another. Although we did take our common law from England, and with it our slavery, still let me say to gentlemen that England has set us a glorious example in the application of that law, by the manumission of her slaves, worthy of our swiftest imitation, and the imitation of every republic and government on earth. It makes me feel sad for my country to hear men talk about liberty, while I remember that there are so many millions of poor creatures in slavery down South. Gentlemen can sympathize with Hungary, but they cannot sympathize with three and a half millions of human beings, crushed in slavery at home, denied the privilege of the marriage institution, worked without pay, scourged without mercy, sold upon the auction-block, maimed with impunity, and thousands of them hunted with blood-hounds, and shot as outlaws. Every-body admits that slaves are human beings. How long shall these things continue?

In discussing this question the other day, the gentleman from Boston, (Mr. Choate,) in regard to the matter of the great expense of collecting debts,—and let me here say that I thank the gentleman for his kindness,—used this language: "I would recommend the gentleman from New Bedford to advise his friend to change his lawyer." I knew a man once to do that, and he not only had to pay the new one for doing the business, but he had to pay the old one to keep him still. [Laughter.] The gentleman said that business would be delayed, because there would

not be judges enough to do the business. I happened to step into the police court room, in this city, the other morning, to see a gentleman I was told could be found there, and while waiting, the justice disposed of some twenty cases in about as many minutes. And this was all done by a single police judge.

What a great blessing it would be, when cases come into the court of common pleas, and the supreme court, if they were put through the same or even with appropriate speed. It seems to me if judges were elected by the people, that there would be more promptness and dispatch in the decision of cases, because the people would demand that such should be the order of things. In that case, there would be no two or three years' delay to find out whether a man's fence was two or three feet over the line of another man's ground or swamp pasture, which was not worth two dollars an acre, the decision of which would cost hundreds of dollars. [Laughter.]

I am in favor of the amendment of the gentleman from Worcester, (Mr. Knowlton,) because as the gentleman from Lowell, (Mr. Butler,) said, it is better than anything now before us. I will take it as far as it goes. I wish it was one or two stages farther off, because by the time it came to its final passage, I think that we might get a vote for electing judges by the people. I support this amendment, because if nominations have to go before the Senate, our governors would be a little careful to make the very best nominations, with some other recommendations beside the fact that they were "live, young, and active Whigs." If the governor had to nominate them to the Senate, he would endeavor, I think, to select men who have character, standing, and something else besides ability to serve party purposes. When this question is taken, I feel perfectly confident, and I earnestly desire that this amendment will prevail.

The usual hour of adjournment having arrived, Mr. French gave way, and on motion, the Convention adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

### *Leave of Absence.*

Leave of absence was granted to Mr. Morton, of Tisbury, for the remainder of the session.

### *Justices of the Peace.*

Mr. CUSHMAN, of Bernardston, offered the following substitute for the first resolve reported by the Committee on the subject of Justices of the Peace, which, on his motion, was laid on the table and ordered to be printed.

*Resolved*, That it is expedient to amend the Constitution as follows :—

There shall be two classes of Justices of the Peace, viz. :—

1st. *Trial Justices*, who shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2d. *Justices of the Peace*, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall extend only to the acknowledgment of deeds; the administration of oaths; the issuing of subpœnas, and solemnization of marriages.

3d. The offices of Justices of the Quorum, and Commissioners to qualify civil officers, are hereby abolished.

### *The Judiciary.*

The Convention renewed the consideration of the unfinished business of the morning, viz.: the resolves on the subject of the Judiciary, the pending question being on the amendment moved by the gentleman from Worcester, (Mr. Knowlton).

Mr. HOOPER, of Fall River. I move to amend the proposition before you, by striking out all after the word "Constitution," in the first line, and inserting the following :—

*Resolved*, That it is expedient so to revise the Constitution that all vacancies occasioned by death, resignation, or other cause, among the judges of the supreme judicial court, shall be filled by an election at large throughout the State, for a term of ——— years, so arranged that two shall not be elected at the same time for the same term of years.

*Resolved*, That it is expedient so to revise the Constitution as to require that provision shall be made, by law, for the election of all the judges and justices of inferior courts, in districts, for a term of years; and that so long as the court of common pleas shall continue as at present constituted, the judges thereof shall be elected in districts for a term of ——— years, so arranged that only one shall be elected in any one year, unless it shall be to fill a vacancy in an unexpired term, and the judge whose term of service is first to expire, shall be the chief justice of said court, till such expiration, so that each shall in turn be, successively, the chief justice.

Mr. HOOPER. The effect of this proposition

is to fill the vacancies upon the bench by election, instead of by appointment. The object of it is, first: not to disturb the present tenure. It does not meddle with the court as now constituted, but it enables you to glide into an elective system without any shock or disturbance of those who are at present there. The term for which they are to be elected is left blank, that it may be filled afterwards. The object is simply to present the question whether we will have an elective or an appointed judiciary.

I do not propose to discuss this question at any length, because it seems to me that all that has been said in favor of a limited tenure goes in favor of an elective judiciary; and I appeal to gentlemen who are responsible for the result of this Convention, whether it will not be better for them, and safer, to put this question of an elective judiciary to the people, than simply to propose a half-way measure of limiting the tenure. The gentleman from Taunton, (Mr. Morton,) the other day, in arguing this matter, put the question to us whether, if we had a house to construct, if we had not better employ an architect; or a house to build, if we had not better employ a carpenter; or any other piece of work we wanted done, we had not better employ some one who had served an apprenticeship to his business, and understood it, rather than undertake to do it ourselves. I suppose he applied that to the appointing power. But, I would like to ask, when did the appointing power ever serve an apprenticeship in appointing? Are not the people as capable of selecting the judge as the governor can be, who but yesterday was one of them? It would seem that the gentleman supposed that the governor had some talent, or skill, which other people could not exercise in the selection of these officers. When, or where did he serve his apprenticeship, or where did he get his patent that confers upon him such superior qualifications for the business? The gentleman for Manchester, (Mr. Dana,) has asked us why we do not put out the questions we were sent here to put out to the people, and let other things alone? I was not aware that the question of plurality was one that we were sent here to put out, any more than this. The very document to which the gentleman has alluded, expressly leaves this matter for the Convention to do as they please. The Committee who drew up that document say, expressly, they leave it for the discretion of the Convention which is to assemble. Therefore it is supposed that the decision of this question of an elective judiciary is imposed upon us by the very terms of the document in question, and this is one of the issues on which we are sent here to act.

Now, the argument in favor of appointing for a limited term, instead of electing the judges, is, to my mind, an argument which is wholly in the other direction. If a judge hopes to be reëlected, he would be very likely to devote himself to his duties; and if he is learned and impartial, he can rely with great certainty on a reëlection. Such a man, in opposition to a man of whom the people know but little, would have an incomparable advantage, and would succeed in nine cases out of ten. But what would be the effect in case the judges are appointed? Suppose a term is about to expire, and here is a man in the office who combines in his character all the requisites of a good judge—learned, courteous, able, and impartial—but a political contest ensues, and some ambitious young gentleman, perhaps, gets his eye upon that judge's place, and becomes all at once very patriotic, and attends all the primary meetings—is sent as a delegate to the State Convention, and manages to get his friend nominated for a governor; and then, by great exertion, and spending time and money, succeeds in getting his friend elected for governor. Then how will the case stand? He demands the place of the judge whose term expires. The judge happens to belong to another party, and, although he is impartial as a man can be, or as any man in the community, and has given good satisfaction, would you often find a man in the place of that governor who would resist the claim of the man who had put him in his position? I fear not, Sir. It would be demanded of the governor as the price of his office; and few, under such circumstances, would have the independence and manliness to refuse such a claim. Whereas, if the judge held his seat by the voice of the people, there would be no question how they would decide, when the matter should be referred to them. They would retain the man whom they knew to be able and impartial, in preference to one of whom they knew little or nothing. And, for this reason, I am in favor of making the office elective, instead of continuing it by appointment for a term of years; and I hope this Convention will come to this conclusion.

I offer this amendment, because I have been solicited to do it by a number of gentlemen, who stated that they voted against it when the proposition was up before, and who desire to change their vote. If this Convention are wise, in my opinion they will adopt this measure, and give it to the people. It is a proposition which I believe the people will hail with acclamation. I believe they will give to it a more hearty support than to any other proposition which we shall put to them. I maintain that no such proposition

has ever been put to the people of any State, which was rejected by them. To be sure it was not adopted in New Hampshire, because a two-thirds' vote was required; but it received a large majority of the votes, and more than any other proposition submitted to them. Such a proposition has never been rejected by a majority of the people of any State, and I hope it never will be. I hope this will be accepted.

[Mr. French, of New Bedford, who was interrupted by the adjournment of the morning session, now took the floor and concluded his remarks.]

Mr. FRENCH, of New Bedford. I have been significantly reminded that it is not democratic, and I know it is rather startling to many persons, when the idea is advanced that law is to be disregarded. Therefore, I beg leave to reply to that insinuation here. The gentleman for Wilbraham (Mr. Hallett) told us the laws of the United States were the supreme laws of the land. I agree with him that they are so, but only when those laws are in accordance with the Constitution of the United States. In regard to the law to which the gentleman for Wilbraham referred upon a former occasion, I wish to introduce a little proof of its unconstitutionality—that it is no law, and should not be regarded as such, and cannot be, to much extent, enforced. It was the opinion of John C. Calhoun, that great statesman from the Palmetto State, that the fugitive slave law was unconstitutional; and such was the opinion of Honorable Mr. Rhett, his successor, who pronounced upon the floor of the United States Senate, these remarkable words:—

"This government has it not in its power to enforce this law, so as to make it efficacious. I believe that by the action of States *alone* the rights of the South can be maintained and enforced." Again he says: "The delivery of a fugitive from labor is an affair between two States. The fugitive is to be delivered up. To be delivered up, he must be seized. He must be in the possession of those who are to deliver him up. No authority within a State can seize a criminal against the laws of any other State, but the authority of the State itself to which he has fled. This is the law of the nations. Look at the CONSTITUTION. Is there one word in it referring to fugitive criminals and fugitive slaves, conferring any power on congress to legislate upon these subjects? No power whatever is given to congress; congress is not mentioned in that connection. What is the inevitable inference? Why, that congress has no such power."

I regret that my learned friend for Wilbraham, (Mr. Hallett,) is not in his seat, that he might put me right if I have wrongly quoted these distinguished gentlemen. I will go as far as any man for maintaining law; but it comes with a very ill grace from the gentleman for Wilbraham to talk to us, and give us lessons upon this subject, after what he has said upon the very point in question. It will be remembered that about a year ago, there was a certain convention held in Baltimore, and that a certain gentleman went down there from the State of Massachusetts, who participated in that convention. In laying down their national platform in that convention, they laid down and asserted the old resolves of 1798—the resolves of Madison and Jefferson. The gentleman for Wilbraham claims to be a Jeffersonian Democrat, and so do I; and I wish he was here to explain and show how he stands upon this matter.

It is well known that these resolutions, which declared certain statutes to be no laws, were incorporated, in 1852, as a part of the Democratic platform. I believe that if those resolutions had been read at the time, they would never have formed a part of that platform. I beg leave to read one or two extracts from those drawn up by Thomas Jefferson, which are very short:—

[From Resolve the First.]

"Wheresoever the general government assumes undelegated power, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and as an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, *each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*"

[From the Second Resolve.]

"The same act of congress passed on the 14th day of July, 1798, and entitled 'An act in addition to the act entitled an act for the punishment of certain crimes against the United States;' as also the act passed by them on the 27th day of June, 1798, entitled 'An act to punish frauds committed on the bank of the United States;' and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution, *are altogether void, and of no force*, and that the power to create, define, and punish such other crimes is reserved, and of right appertains, solely and exclusively, to the respective States, each within its own territory."

[From Resolve the Third.]

"That, therefore, the act of congress of the United States, passed on the 14th of July, 1798, entitled 'An act in addition to the act entitled

An act for the punishment of certain crimes against the United States,' which does abridge the freedom of the press, is not law, but is altogether *void, and of no effect.*"

[From Resolve the Fourth.]

"The act of congress of the United States, passed the 22d day of June, 1798, entitled, 'An act concerning aliens,' which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether *void, and of no force.*"

[From Resolve the Ninth.]

"The Commonwealth is determined, as it doubts not its co-States are, not tamely to submit to undelegated, and, consequently, unlimited powers, in no man, or body of men, on earth."

That is the doctrine of the gentleman for Wilbraham, as put forth at the Democratic Convention in Baltimore, in 1852. Now, I sumbit whether it becomes the gentleman to read us lectures, because we are opposed to the fugitive slave law, and because, as there is not a particle of authority given to congress to pass it, we say it is void, and of no effect.

The gentleman, in the course of the discussion, made an allusion to Hungary. When that Democrat of all Democrats, Kossuth, was here, he made a short tour in the South; and while there, it may be well supposed, that the question came up about the application of his doctrines to the peculiar institution. Upon one occasion, when two gentlemen were discussing the matter, one says to the other: "What shall we do with Kossuth? The doctrine he puts forth is in direct opposition to the peculiar institution, and, if carried out, would give liberty to every slave in the South." The reply was: "It's no use talking about it—we must go in for liberty in Hungary."

It is very convenient for some gentlemen to go for liberty in Hungary, but not so convenient to go for it nearer home. An attempt has been made to carry out this fugitive slave law in various places, but it has been trampled under foot; and I shall continue to rejoice so long as such is the fact. How was it at Syracuse, in the State of New York? The officers of the United States government did not dare to put their hands upon the man who rescued Jerry. It was there, that Gerrit Smith said to the officers of the law: I am the man who rescued Jerry. I am accountable. Let the sledge-hammer of your fugitive slave law fall upon me as soon as you please. He remained in Syracuse three long days, to give them time to deliberate as to what course they should pursue. The officers of the general government in the Empire State, did not dare to put their hands upon Gerrit Smith, although he stood up and boldly told them to their faces: "I rescued Jerry, I am responsible, execute your law as soon as you please." Thank God, that man is elected to congress, and he will stand up there like a man, in the face of this slave-holding nation, and preach truth which will make many a man free. What has he said? He has declared that there is not a single slave in his chains at the South, that has not a perfect God-given right to liberty, and advised all the slaves in this republic to take it immediately. So much for the constitutionality of the fugitive slave law, and the ability of the government to enforce it. Mr. Rhett was a truer prophet than the Massachusetts senator, Mr. Webster.

One word in relation to the amendment of the gentleman from Fall River, (Mr. Hooper,) just now read, which provides for electing judges by the people.

I can most cheerfully give it my support, and hope it may find favor, and be adopted, confident, Sir, that the tendency of such a provision in the Constitution will be appreciated by the people, and be calculated to improve our judiciary system.

Let our judges be elected by the people, and you will never be told that they crawl under chains to reach their benches, or turn their backs upon an application for a writ of *habeas corpus* in behalf of a poor colored man, equally with us entitled to life and liberty, who shall be kidnapped in the streets of Boston, locked up in an upper chamber of your chained-up court house, guarded by fifteen hundred wealthy merchants, "gentlemen of property and standing," finally, in the "gray of the morning," marched in a hollow square of the armed police of this city, over the very spot, of revolutionary memory, which was moistened by the blood of Attucks, and put on board brig "Acorn," bound South, whilst the soldiery shall be sleeping upon their arms in Faneuil Hall.

Mr. GILES, of Boston. I wish to speak about ten minutes on this subject, in justification of the vote which I shall give, as the yeas and nays have been ordered upon it. I wish my friend from Worcester would modify his resolution by leaving out the number seven, and let us take the question upon the simple idea of a limited term. If that be carried, we can put in such a term as the Convention please. I think there are many who would vote for the proposition to limit the term to seven years; but I should like the privilege of voting simply upon the question of a limited term. The proposition has been discussed in reference to two things: the first an elective judiciary, and the second a judiciary for

a limited term. I am opposed to an elective judiciary system, but not because the people are not competent to elect a good bench. I believe they are. And I am not opposed to it because it has not precedent in its favor. It has precedent, and American precedent, and Massachusetts precedent. The first court that we had was elective. I have here "The coppie of the liberties of the Massachusetts Colonie in New England," and this was the first code of laws ever established in New England; and by that code the court was an elective court, and that annually. There are two simple provisions relating to it.

The fiftieth article is as follows:—

"All Jurors shall be chosen continuallie by the freemen of the Townes where they dwell."

There you have part of your court. The fifty-first article is this:—

"All associates selected at any time to Assist the Assistants in Inferior Courts, shall be nominated by the Townes belonging to that Court, by orderly agreement among themselves."

And, by the Colony Charter of 1628, these assistants who were to be assisted, were chosen annually, by the freemen, according to the fundamental law of the Colony. Therefore, we began, here in Massachusetts, with an elective judiciary, elected by the freemen annually, including jurors and judges. That was tried, and they abandoned it, and the court appointed by the executive, was substituted in its stead.

Now there are two practical objections to electing judges, which are decisive in my judgment: First, it is not enough that a judge should be a great lawyer; it is not enough that he should be uniformly and universally known to the people, but he must have a mind and a body constituted for judicial duty; and that body and that mind are personal, and generally known to the public only to a limited extent, and to be found out by the executive on inquiry. I have always understood, that the greatest lawyer we ever had in this country, now among the honored dead, ever discouraged the wish of some to place him upon the bench, though it were the highest office of that character in the Union, because, although every-body conceded that he understood the Constitution of the country better than any other man in it, and he had earned the reputation of the "Defender of the Constitution;" yet he said he knew the constitution of his own body and mind too well to accept that station. And the greatest living lawyer we have among us, his friend and successor, who has electrified this body with his eloquence, and carried everything before him except truth, that nobody can overcome, knows himself too well ever to accept a seat upon the bench.

Then, I say, that for a good judge, something more is required than popularity, and extended fame, and great legal attainments, and great powers of eloquence in the advocacy of a cause; and that something more must be found out by one man, whose duty it is to inquire and ask advice of his Council.

If we look to the character of a judge, I know of no place where it is better described than in the Book of Moses, who was the first and the greatest judge whose name is recorded in history. Jethro, his father-in-law, advised him to select men to help him to judge the causes of the people, because it was too hard for him, and he advised him to select men who feared God, men of truth, men who hated covetousness; and Moses did select able men, known to all the tribes; and he made a court, whose decisions, so far as they are on record, are good authority to this day, notwithstanding the fling at the Connecticut Blue Laws. I have those laws, and the fling is unjustifiable; for they founded a court who obeyed the laws, and in default of there being any statute law, they were bound by the law of Moses and the Word of God. That is good doctrine now.

But, Sir, there is another reason, equally as decisive to my mind, upon this question, as it was on another, a short time ago. I do not wish to put the election of the judges to the people, to have them voted for or against; I do not wish the people to take sides for or against a judge. The gentleman to whom I have alluded, set forth graphically and truly the effect of popular elections upon the bench and the bar, and said that it would subject the bench to suspicion, that it would incite the bar to opposition, and that justice would suffer in her sworn temples, among her sworn officers. But, Sir, he did not, as I expected and hoped he would, go farther, and say that it would demoralize the people in regard to the bench, and divide them in reference to their own bench. I would never put the election of the judge to the people in such a way that they should say, I am for him, and I am against him. Never; for a reason that I will state directly.

What is the danger to our judicial system, that calls for any action? I admit, with my friends, that our court is a good one. Who can read Judge Kent's Treatise upon the Judicial System of England and of America, and not feel grateful to his Maker for the institution that has put so

much of human reason into law, and so much of human conscience into judicial decisions? No one. There is no tribunal so well deserving of the admiration of any man who is a friend of humanity, and who is a part of humanity, as our judicial system; and the strongest argument against any change is, that our court, as now constituted, is good enough. Let well enough alone. But there is a danger, and that danger I wish to avert. If the court is good, and if the danger is great, I am ready to vote for the limited tenure, which is proposed by my friend.

Sir, the tenure of our judiciary at this moment, in Massachusetts, in this land of liberty, is a freehold. Yes, Sir; a freehold at common law, because it is during good behavior, of uncertain length and breadth—a freehold, a base freehold, I grant you, Sir—compared with certain titles to real estate, but still a freehold. Now, Sir, look at the judicial history of this country, at this moment, and what is it? You see the people going from one extreme to the other—going from an appointive judiciary, with a life office, a freehold office, to an elective judiciary, for a short term—some terms as short as one year. The truth is, Mr. President, that a freehold office, with a life tenure, is repugnant to American liberty. I might say it is abhorrent to American liberty, but I will only say, that it is abhorrent to my own heart; and, Sir, against that tenure of our judiciary, the great popular heart of American liberty beats—beats—beats—and mine beats in sympathy with it. And that, Sir, has swept away, and is sweeping away, and will sweep away, that foundation stone of our liberty, unless that objection be removed. Now, Sir, I would propose this remedy: I would substitute, for the English foundation of your court, the American foundation. I would substitute for "*independence of the crown*," the "*support of the people.*" I would take your court up bodily from that monarchical basis, and place it bodily upon the basis of liberty, viz.: instead of independence of the crown, I would have the support of the people. I would so arrange your fundamental law that the people as a whole, and as a body, should always be in favor of the court. Hence, I would not put it to them so as to compel them to divide for and against it; and hence, I am opposed to an elective judiciary. I want to take away this popular feeling—call it prejudice, or what you will; but it is a fact, and a stubborn fact. I want to take it away, and let your whole people come up to the support of the court with a warm heart, and with strong hands. Now, Sir, what is the English system? The English system was established by the act of settlement in 12th and 13th of King William III., in 1700. There you have it, *verbatim et literatim;* and we have it in our Constitution, almost bodily, in chapter third, article first, and the subsequent article of another chapter. The object in view in the English system, was to prevent the crown from making a court to try its own cases against the people. The judges holding office at the will of the crown, when the crown wished to try a case of privilege against liberty, it could, and it frequently did, make a court to try its own case. That act provided that, after it took effect, the judges or pensioners—for they were classed with pensioners—under the crown, should not hold a seat in the House of Commons, and their commissions should run, in the Latin words of the writ, *quamdiu bene se gesserint*—while they carry themselves well, or while they behave well. And another article in that same law, prevented the pardon of the crown being pleadable in bar of the judgment of the court. There was the system, and here it is in this article of the Constitution. But the American system is in article third, which the gentleman from Fall River read, and I was glad to hear it. Our fathers had both systems before them, and they put them both into the Constitution, side by side. The American system is as follows:—

"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 and 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."

That is the American system—known by our fathers, approved by our fathers, put into the Constitution by our fathers, right after the English system. In regard to the number of years, we differ; that is a matter of judgment; but in regard to limiting the tenure of office, so that it shall not be a freehold, that is a matter of principle. I shall vote for a limited tenure.

Mr. HOOPER, of Fall River. Is not a proposition now pending before the Convention to change what the gentleman calls the American system, and make the judges elective?

Mr. GILES. I am not able to answer that. The gentleman refers to another proposition; as to justices of the peace, I am not able to say. While we are upon the subject of justices of the peace, let me ask, what governor turns out justices of the peace when he comes into the execu-

tive chair, whatever may be his politics, if the justice of the peace is a popular officer? Does not every gentleman, who comes into the executive chair, renew their commissions, without being asked to do so? I have seen gentlemen show commissions sent to them by a political opponent, without being asked; they did not know that their commissions had expired, until they received a renewal from a political opponent.

Now, as to tenure, I should prefer fifteen years. I would not say that the judge should not be reappointed, because that might take away the inducement to good conduct, and to study faithfully his duty; but, as gentlemen know, if the tenure was fifteen years, he would seldom, if ever, be reappointed; and all the objections so forcibly put by gentlemen upon the other side, as to the effect of reappointment upon the existing judge, would be removed. Let me say, that in seven years, or in ten years, or in fifteen years, a proper man will acquire a judicial character that no political party can afford to sacrifice upon political grounds merely. I wish to vote distinctly upon a limited tenure of office, as a matter of principle—of American liberty and policy; but the number of years is a question upon which I, with others, must assent to the decision of the majority. In answer to what gentlemen so forcibly put, as to what is called the popular idea of liberty, as it may bear against the court, when I say it is beating against the bulwarks of the judiciary, I will refer to the speech of the gentleman from New Bedford, this morning, and the effect which it had upon their own minds. I say that the judge should be no man's man—the judge should be no party's man; and when I say that, I say, with equal emphasis, the judge should be the people's man—he should be the State's man—he should be the law's man; and, agreeing with the approving nod of my friend for Wilbraham, I will say, with all the emphasis of my mind and heart, that he should be the Constitution's man. Give me a man like that, and he is my judge for any human tribunal. I am opposed to the elective principle, but I am in favor of a limited tenure, and, although I may differ from others to whose judgment I defer, I shall give my vote upon the convictions of my mind and conscience; and I believe that this will be right.

In conclusion, as I must omit many things in my mind, to conclude within my time, I will say, that a judge should be no man's man; he should be no party's man; but he should be the people's man—he should be the State's man—he should be the law's man, and—I say it with all the emphasis of my mind and heart—he should be the Constitution's man.

Mr. ADAMS, of Lowell. I have not occupied the attention of the Convention for one moment upon this question, and I do not propose to do so, if I can get an opportunity to vote. This discussion has run through several days already, and I submit that, if we should sit here and discuss the question a day or two longer, there would not, probably be anything new said upon it, either for or against. It is extremely desirous that the vote should be taken before the adjournment of the Convention to-night; and, as the yeas and nays are ordered upon this amendment, and as there may be one or two other amendments on which the yeas and nays may be ordered, I think, under the circumstances, it is proper that I should move the previous question, which I now do.

Mr. SUMNER, of Otis. I have a very few words which I should like to say, if the gentleman will have the goodness to withdraw his motion for a moment.

Mr. ADAMS. If it is the wish of the Convention to hear the question discussed farther, I will withdraw the motion; but I am desirous of having the question taken this afternoon. I would yield to my friend who has just taken his seat, as quick as I would to any other man living, but I think it is the general desire of the Convention that the question should be taken.

[Cries of "Question!" "Question!"]

Mr. LORD, of Salem. I am very sorry, Mr. President, that the chair happens to be occupied as it is now, (Mr. Wilson in the chair,) because if it were occupied by the President of the Convention, I should call upon the gentleman from Natick to spring to his feet, as he did yesterday, in opposition to that adroit movement by which, just upon the heel of a speech of a gentleman who made just such a speech as if he expected that the previous question was to be moved;—I say that I regret that the chair happens to be so occupied, because we cannot now have the benefit of those suggestions. I know that we shall, in a moment, have my learned friend from Worcester, whom I see right before me, (Mr. Allen,) and who yesterday followed the gentleman from Natick against this motion, to put an end to the debate upon a subject that had not occupied the attention of the Convention more than four or five times as long as this has, and which was not more than a hundred times as important as this is. I think he certainly will spring to his feet——

Mr. ALLEN. In every instance, hitherto, where I have spoken or acted upon the subject, it has been in favor of allowing to the gentleman from Salem, and his friends, an opportunity of discussion; and therefore I am at a loss to know

why an allusion has been made to me in relation to this matter. My influence has been uniformly in favor of the freedom of debate.

Mr. LORD. I will certainly apologize to the gentleman from Worcester, if I have done him any injustice. I am very happy indeed now to learn that he is opposed to the previous question. I am very happy to learn that he does not now desire that this motion shall prevail. And, Sir, I have observed that it is not those gentlemen who have been most prominent in this discussion, upon whom the lot always happens to fall to move the previous question. The gentleman from Lowell, whom I see directly before me, (Mr. Butler,) did not move the previous question this afternoon directly; it was his colleague who made the motion; and I say it so happens that those gentlemen who, in the matter of political preferment, stand the best chance, are not the ones upon whom the lot ordinarily falls to move the previous question. If, Sir, it would be at all proper to allude to a fable which is now fresh in my mind, and which I know the Convention will not want me refer to, because every gentleman has it in his own mind,—I hear it whispered all around me,—that would be a good illustration; but I will not name it.

Now, Sir, we all agreed yesterday, on both sides of the House, that the best mode to close debate was to allow those gentlemen who had anything to say upon the subject to say it; and when they had said it, to take the question. We all agreed to that. And, as I said, if I did any injustice to the gentleman from Worcester, (Mr. Allen,)—and I do not know that I did, because he says he is always opposed to this previous question; but I confess I had a sort of lingering reminiscence,—probably it was a mere delusion in my own mind,—but there was there a flickering recollection that not very late in the session, on a matter that had not been wholly exhausted, the gentleman from Worcester did move the previous question,—although, I say, that such is my recollection; and although gentlemen around me aver that my memory is not at fault, yet I am bound by the declaration the gentleman has just made, to believe that I am laboring under a mistake in this matter, and that the gentleman did not move the previous question. If, therefore, I have done him wrong, he will accept this as my apology.

Mr. ALLEN, of Worcester. Mr. President: I do not know that I ought to notice an attempt to introduce a personal question with me—for what purpose I know not, having had little to do with the gentleman from Salem, either now or formerly; I say, why he should seek a personal controversy with me, or refer to me in the manner in which he has just done, I am wholly at a loss to say. I do not know to what cause I am indebted for this particular honor. If, however, he chooses to honor me with his remarks, and to quote either my words or my acts, as uttered and done in this Convention, I would be obliged to him, if he would quote them correctly. I said that my uniform action had been in favor of granting the right of debate to the fullest extent; and, I believe, that on one occasion, when that gentleman was desirous of addressing the Convention, and by the rules of the Convention he was precluded therefrom, I obtained the liberty for him, and under similar circumstances I obtained leave for other gentlemen of his party to address the Convention; and, I believe that I can safely say, that, if the course of any one in this body, towards that gentleman and his friends, has been marked with liberality from the beginning, it has been mine. But, Sir, I repeat, that perhaps I may have done wrong in noticing this attack, which the gentlemen has seen fit to make upon me. I do not know to what cause I am to attribute the honor. Certainly not to any relations that have subsisted between us, friendly or unfriendly, or to any movement of mine by which I have come in contact with him.

Mr. LORD. [Mr. Allen having left his seat and walked up the aisle, towards the door.] Mr. President:—

> "He that fights and runs away,
> May live to fight another day."

[Much laughter, and Mr. Allen returned to his seat.] I have no desire to say, either, that there have been any relations between the gentleman from Worcester and myself. I am quite indifferent in that respect. I have made no attacks upon him. Anything I have said cannot be tortured into an attack upon him. I said that I was happy to see the gentleman from Worcester in his place, because I should expect him to take the same ground to-day that he took yesterday. Unless he is one of those gentlemen who cannot keep the same thought over night, I think——

Mr. WHITNEY, of Conway. I rise to a question of order.

The PRESIDENT. The gentleman from Conway will state his point of order.

Mr. WHITNEY. The gentleman does not discuss the question before the Convention. The Chair will be good enough to state what the question is.

The PRESIDENT. In the opinion of the Chair, the gentleman from Salem was not adhering closely to the question before the Convention. The ques-

tion was on the call for the previous question. A certain line of remark, however, had been previously indulged in, and the Chair did not feel called upon to interfere of his own accord.

Mr. LORD. The only remark I have to make is this: while I had the floor, and was discussing the question, the gentleman from Worcester, (Mr. Allen,) rose and made some allusions——

Mr. WHITNEY. Did the Chair decide the question of order. Did he rule that the gentleman was speaking to the question? I rose to a question of order. I think the gentleman is not speaking to the question before the House. If the gentleman is not discussing the question, I desire that the Chair will hold him to the rule.

The PRESIDENT. If the Chair is called upon to decide the matter, he must say that the gentleman is not strictly in order. The gentleman from Salem will confine himself to the question.

Mr. LORD. If it is not in order to apologize to the Convention for being out of order, then I must go on. [Laughter.] Now, Sir, I desire to bring myself precisely within the rule of order, if I can do so; and I think I can do so, and at the same time reply to the gentleman from Worcester.

I say, Sir, that yesterday, when the motion was made for the previous question, the gentlemen who are in the majority in this House, rose in every quarter of the House, protesting against it. It was upon a subject which had been discussed much more than this subject has been. It was upon a subject much less important than this—a subject on which every gentleman had spoken, as it turned out afterwards, who desired to speak—because, although the gentleman from Natick, (Mr. Wilson,) and the gentleman from Worcester, (Mr. Allen,) and others, rose to oppose the demand for the previous question, yet an intermission of two hours, (from one o'clock till three,) answered just as well, and in the afternoon no person spoke upon the subject. I say, therefore, that these gentlemen are committed to a position upon the previous question, on a matter of this importance, that has not been discussed any more than this matter has. And I am opposed to the previous question, at this time, for other reasons. I am opposed to it because I myself, through the —perhaps I ought to say, because I was more active than some other gentlemen, and have had an opportunity to address the Convention, though not at any great length, for I believe the President told me afterwards that I was only upon the floor about eleven minutes—I say that I am opposed to the previous question, because other gentlemen desire to speak—not I. The gentleman for Manchester, (Mr. Dana,) made a brief address on the other side of the question, which is now in its last stage, and those followed one after another on the majority side, and nothing has been said at all except by those who are in favor of the proposition. The gentleman for Manchester made a brief speech in the morning, and I made a few remarks—and but a very few—but not on the general subject. I did not propose to discuss it. It has been discussed by others, and it is now in its last stage, in a condition in which it cannot be amended; because, I understand the rule to be, that if we adopt this resolution, it must stand just as it is, as part of the Constitution; and, inasmuch as gentlemen wish to propose amendments, it seems to me, that of all occasions when the previous question might be moved, this is the most unseasonable time to sustain it. But, Sir, I do not make these remarks from any personal feeling in regard to myself. I have had my day. I have said what I design to say, and therefore I speak from no personal considerations. I speak in behalf of others, towards whom I am democratic enough to believe that they ought to have as free an opportunity to speak as I have had, and for the freedom of debate.

Mr. BUTLER, of Lowell. I will detain the Convention only with a single word. "Out of the abundance of the heart, the mouth speaketh." I have observed that the gentleman from Salem, on this call for the previous question, thought it was quite pertinent to the subject of debate, to say that I have moved the previous question indirectly.

Mr. LORD. If the gentleman from Lowell will pardon me, I said no such thing. I said that the gentleman did not move the previous question directly.

Mr. BUTLER. Oh, yes; no doubt. And the gentleman has not now even the virtue of honesty. [Cries of "order," "order."] Every-body understood him, Sir, because every-body knew that he meant to intimate that I did move it indirectly; and I must say that when a man manifests so much malignity——

[Renewed cries of "order," "order."]

Mr. LORD. I rise to a question of order. [Laughter.]

The PRESIDENT. The gentleman from Salem will state his point of order.

Mr. LORD. My point of order is this: whether the gentleman's remarks are to the question; whether "the main question shall be now put?" [Laughter.] I withdraw my point of order if I may be allowed the opportunity of replying.

The PRESIDENT. The gentleman from Lowell will proceed in order.

Mr. BUTLER. I say that one of the gentleman's arguments why the previous question should not be put, was that I had made the call for it indirectly. Sir, I had the honor to ask my colleague to withdraw it in favor of my friend from Otis, but he would not, and certainly had a right to exercise his own judgment.

Now, I have seen men, in my time, who had malignity enough to make an attack, and not manliness enough to stand by it; and, Sir, I have seen the gentleman from Salem, now complaining of the freedom of debate, and he says that the main question ought not to be put, because it will cut off the freedom of debate. I remember, Sir,—in order to show that it is parliamentary usage to stop debate whenever the majority think proper,—the first time that I had the honor of rising in a deliberative assembly. It was in this House, on a joint meeting of the Senate and House of Representatives; the president of the Senate in the chair. In the remarks I made, being ignorant of parliamentary rule, I had the misfortune to wander from the question, and the gentleman representing the city of Salem—called the city of peace, I suppose, because there is no peace in it—rose and called me to order; and when I attempted to go on he moved the House that I be prevented from going on, and he got one hundred and thirty-eight men to stop me; but that was not quite men enough to stop me, and I was permitted to proceed. And this is the man who talks about the freedom of debate!

Mr. LORD. Is all this pertinent to the motion for the previous question?

The PRESIDENT. The gentleman from Lowell will proceed in order.

Mr. BUTLER. I think the time has come when the question should be taken, and I hope it will be taken. I only thought I should like to call back this reminiscence. I grant that I was not stopped, but it was not on account of any good-will in this quarter.

Now, I think we have said enough on this matter, and I hope the previous question will be sustained.

Mr. HILLARD, of Boston. I am not one of those, who, at all times, and on principle, am opposed to the previous question. I think it is a right which the majority may use, and sometimes must use, but I think, also, that it is an extreme medicine of a deliberative assembly, and not its daily food. And I submit it, if the gentlemen who are charged with the responsibility of this body—the majority—are not now administering this extreme medicine when we only want a little more of the daily bread. What attitude are we in? Here is a question which we supposed was settled some days ago. This morning, between ten and eleven o'clock, the subject revives again, upon the proposition for a tenure for a term of years, and this afternoon it takes another aspect: that of making judges elective. I submit that these two questions are not only more important, but they are at least four times more important—if you can thus guage such things—than any other one question that has come before this body. And what has been the course of debate to-day? We have had a speech from the gentleman representing Manchester, (Mr. Dana,) and another from the gentleman from Salem, (Mr. Lord,) neither of them cutting into the pith of the question, but only suggesting certain grounds of expediency, irrespective of their merits, why they should not be pressed at this time. Following them, we certainly have had some noticeable speeches, such as the very effective speech of the gentleman for Wilbraham, (Mr. Hallett,) and the remarkable conflagration of the gentleman from New Bedford, (Mr. French,) and this afternoon a brief speech from the gentleman representing Fall River, (Mr. Hooper,) and one who has startled friend and foe, from the valued friend of twenty-six years, whom I see before me, (Mr. Giles,) who spoke with the voice of Jacob though the hands were the hands of Esau; and, yet, upon the tail of all this, when the minority feel that this is a paramount question, in which our constituents are most deeply interested, is the great axe to fall, cutting off from the minority the power of answering one of the new arguments which have been made to-day?

Now I submit to the majority, that the minority are in a position not to ask favors, but to claim rights, because we have not turned towards them a factious countenance. We have adhered to the legitimate functions of a minority, and no more. We have thrown no factious or captious obstructions in the path of business here; and we are, therefore, not reduced to ask favors. We claim it as a right, to be allowed to answer some of the new arguments which have been made to-day; and, if we are denied that right, I hope we shall forever after hold our peace, and appeal from this body to the people in November next.

Mr. KEYES, for Abington. I do not rise because I am in favor of the previous question at this or at any other time, but because, if the previous question should be adopted, there would go out, as the discussion now stands, a false impression—if any impression at all—in reference to the facts of the case. I should suppose, by the course the argument has taken, that one party here, called the minority party—by which, I sup-

pose, is meant the Whig party—had been very much oppressed, and had not had an opportunity to be heard, while all the speeches made, had been against the position taken by its members. I do not know that I am a very good judge, not having been here all the time, but I think that the gentleman from Fall River, (Mr. Hooper,) and myself, are almost all who have said a single word in favor of the election of judges by the people. We knew that there were here a hundred friends of that measure, who feared the people too much to advocate the measure, but I have heard few make speeches upon that side of the question; whereas, all the power of the Whig party, and, if I may say it without disrespect—all the cowardice, and that is much, of all the parties—have been exerted upon the side in favor of appointment and the life tenure.

Now, Sir, I should be glad to have this debate continued, because I feel stronger and stronger, every day, in support of the policy of the election of judges by the people. I do not guess at it, but I know that if this debate continues, that view of the question will accumulate strength every hour. I am satisfied, that however much talent may be left in the quarter against such a proposition, that some of the best has already been expended in opposition to such a scheme, and those efforts cannot be outdone. But, I wish to say, if ever there was a time when a party, or the friends of a particular measure, could with propriety move the previous question, this is the time; because it is a time when the side moving it, have had but two or three speeches upon the subject; while a large portion of the talent of the opponents of an elective judiciary, has been poured out in defence of their side of the question, and my impression is—though I by no means wish to make a comparison of one part of the members of this Convention with another—my impression is, that no argument upon that side could strengthen it, but that debate would have a tendency, in a body like this, to do away with the bugbears which always have existed in the community in regard to it. If we could strip this subject of that influence which is born with us, and which has existed in the atmosphere about us as long as we have lived, a large portion of what are called the most able arguments put forth would seem absurd. The idea that you must strip the governor of all his appointing power, because he is not fit to be trusted with the selection of even the least important agents, and yet, that he is the only power competent to be trusted with the appointment of judges, is absurd.

Mr. SCHOULER, of Boston. I rise to a question of order. The question before the Convention is on the call for the previous question, but the gentleman is discussing the main question, and therefore is out of order.

The PRESIDENT. The point of order is well taken, and the gentleman for Abington will confine his remarks to the question before the Convention.

Mr. KEYES. I beg pardon of the Chair. I forgot myself for the moment, inasmuch as others did not talk about the question. But, to confine myself to the point, I certainly shall not vote for the previous question—I do not know as I ever did—so long as persons wished to discuss. Our side has not been discussed, while the time and talent of the opposition has been poured out in full measure.

Mr. TRAIN, of Framingham. I do not desire to occupy the time of the Convention, although I know they would listen to me with pleasure, because they know me to be a good-natured man, and one who never does anything simply for the sake of irritating somebody—exactly as my friend from Worcester says, I never say anything maliciously—but I speak out of the fulness of my heart. Well, Sir, I had the misfortune, yesterday, to move the previous question out of that fulness, and I am sorry to confess to-day, that I did a very foolish thing; and I am afraid my friend over the way (Mr. Adams) has done another very foolish thing, because it is perfectly obvious to-day, that there are those who wish to address the Convention upon the main question, though it was perfectly evident yesterday that there was nobody who wished it. But, times change, and men change. That we cannot help; we are all in the same boat, and we will sail along as well as we can.

I am delighted, on the whole, that this matter has arisen, because it verifies the old maxim that "what is sauce for the goose is sauce for the gander," and it is no matter which is the goose, as long as the gander is on the other side. [Laughter.] I hope the previous question will not be ordered at this time. Certainly, no eloquence of mine is needed, to convince this Convention that this is the most important question we shall be called to pass upon here. Every-body concedes that. If this is the vital question, let us talk it out, and my word for it, the people will not care whether we spend a hundred dollars more or less, provided we settle this question with a degree of unanimity which will be satisfactory to all the people of the Commonwealth. I desire to mete out to my friends upon both sides of the question, the same sort of consideration which I received yesterday. As there seems

to be a disposition to press the call for the previous question, I move that when the question is taken it be taken by yeas and nays.

Mr. HOOD, of Lynn. I desire to give a few reasons why the previous question should be sustained. This Convention have voted to adjourn on Saturday next, [laughter]; they voted to accept the Report of the Committee on adjournment, which was that we could bring our labors to a close at that time. There comes up here from the people of the Commonwealth the expression of a general desire that this Convention should finish their labors and adjourn without day. There comes up through the reform press of the State, the same expression. On the other hand, there comes from the press of the party to which the gentleman from Salem, (Mr. Lord,) belongs, a denunciation of this Convention for lengthening out its session. I submit to the Convention that is sufficient reason to induce us to proceed as rapidly with our business as can be done consistently with a proper regard for the public interest. I submit that this question has been thoroughly discussed, and pretty much on the side of gentlemen opposed to taking the previous question. I should be glad to occupy some time in the discussion of the subject, myself, but I am willing to concede my right to the floor upon this question, at this time, and I trust other gentlemen are willing to do the same thing. We have a large number of subjects upon the Orders of the Day, which have to be disposed of; I presume every member here has made up his mind how he shall vote upon the question, and I think the time has come for it to be taken.

The gentleman from Boston, (Mr. Hillard,) says that the minority, to which he belongs, has not endeavored to delay the business of the Convention. I do not propose to make any charge of that kind against them, but from the commencement of this Convention, there has been a constant and continued opposition to any attempt to hasten our business. I believe it was on the second week of the session that I moved the appointment of a Committee to consider the question whether it was possible for the Convention to finish its labors before the fourth of July. When the question was brought up, who opposed it? And whenever a motion has been made to shorten debate upon any question, gentlemen have risen in their places and come out strongly in favor of free discussion. I am in favor of free discussion; but, Sir, I remember the promises made to the people, before the Convention assembled, that the Convention would finish its labors within seventy-five days. I have a printed document before me, to which I would call the attention of gentlemen, for it has been customary to refer to the programme laid down by the committee. In this document they declare that the Convention could be brought to a close in seventy-five days. If we are to confine ourselves to the rule which has been laid down, I ask gentlemen to apply it in this case. But the rule has been departed from in one respect, for in this document I see it is said that the pay of members of the Convention shall be the same as that of members of the legislature.

The PRESIDENT. The Chair must remind the gentleman from Lynn, that the main question is not under discussion.

Mr. HOOD. I hope, therefore, the question will be taken, and that the Convention will then proceed to consider the subjects upon the Orders of the Day, and finish its business by Saturday next, according to the expectation of the people.

Mr. BARTLETT, of Boston. I have had the misfortune to be absent while this debate has been in progress, and I should have been very glad, if not to have participated, at least to have a chance to review the entire ground. That indicates, of course, my desire that the previous question be not now sustained. Probably, Sir, all that could be fairly said, has been exhausted upon the subject. But there are some few questions which, at some proper period, I desire to put to the gentleman who introduced the project. I suppose if the question should be decided to be taken, that the explanations elicited by those questions will be lost, and I will now, if it is in order, put the interrogatories.

The PRESIDENT. The gentleman can proceed, if there be no objection.

Mr. BUTLER, of Lowell. I object.

Mr. BARTLETT. Thanking the Convention for being permitted to proceed thus far, I will trouble them no longer.

Mr. DANA, for Manchester. I have an objection to urge against putting the previous question. I am one of those who usually remain here until there is no quorum, at night, when those gentlemen who are very desirous of terminating debate, and hurrying business, are not here. I agree, that the main questions have been pretty thoroughly discussed; that is, the question of an elective judiciary, and the tenure of office, and perhaps as far as gentlemen wish to discuss them, and I think if no attempt is made to put the question, the Convention will not be troubled by farther debate upon those points. But there is something peculiar in the proposition of the gentleman from Worcester, which has never been discussed, and that is, the subject of confirmation by the Senate. There are some

serious questions which arise out of that subject, which I intended to have spoken of, but was prevented, by being cut off by the half hour rule.

The PRESIDENT. The Chair would remind the gentleman that the only question before the Convention, is the call for the previous question.

Mr. DANA. I wish to state the reasons why the previous question should not be put. It has been argued here, that the main question has been thoroughly discussed; and am I not in order in saying that, though the main question has been discussed, yet there are other questions connected with it, which have not been?

The PRESIDENT. The gentleman is in order.

Mr. DANA. Then I wish to say, that there arise serious questions out of this matter of confirmation by the Senate; and, if I am not mistaken, the gentleman from Worcester has an amendment to that very point, which he will be cut off from offering, if the previous question is adopted. I ask him if he has not an amendment, which provides that the government may fill a vacancy in the court during the nine months when there is no legislature in session?

Another thing: the gentleman's resolution, as it now stands, would remove all the present judges, all of them; and the governor, in 1854, would have to appoint a complete set of judges, of both courts. I would ask if the gentleman has not some amendment relating to that point? These questions are important, and they have not been discussed at all.

Mr. GRAY, of Boston. I would ask upon what principle it is that we allow of more than one stage in the progress of a bill? I take it, that it is to throw the whole ground open more than once; and it is by virtue of that very proper principle that these amendments are offered. It seems to me that, by parity of reasoning, the conclusion is irresistible, that if there is an opportunity of offering amendments, there should be an opportunity of reasonable discussion upon them. I stand upon a ground where I stood yesterday, and standing upon which, I opposed some of my friends. I said then, and I say now, that I have yet to hear the first speech of any length made against time. I say, Sir, though it may not be in order to reflect upon the past, that these attempts to cut off debate are lowering the dignity of the Convention in the eyes of the people, and I think it ought to lower the Convention in its own eyes. I say, also, that not one moment is gained by this course. Now, Sir, I want the question taken this afternoon, because we have a very full house, and I believe we should have reached it, and, what is more, I believe we shall still reach it, without any attempt to force the question. I suppose gentlemen can recall an old tale in verse, which was one of the first things I ever learned, and of which I will only repeat a couple of lines. A soldier came into a lunatic asylum, with his sword by his side. One of the inmates of the asylum asked him why he carried the sword. "Why," said he, "to kill my enemies." I thought there was good sense, as well as good feeling, in the reply of the lunatic:—

> "Sure that's a thought I 'd not own,
> They 'll die of themselves, if you let them alone."

If gentlemen will let this debate alone, it will die of itself. And I really think there are questions connected with the subject, which ought not to be forced under the previous question.

Mr. STRONG, of Easthampton. I am opposed to putting the previous question at this time, for two reasons. In the first place, I think if this subject is debated until some time in the forenoon to-morrow, we shall be able to get a majority of the Convention to vote in favor of the amendment of the gentleman from Fall River, (Mr. Hooper,) which, if I mistake not, is to apply the elective principle to the judiciary. And if we can carry that proposition through the Convention, and submit it to the people, it will be the only thing which I can imagine that will save the life of the Constitution which you will submit to them. I cannot think of anything else which we can do that will have the effect of redeeming the other acts which we have passed.

But I oppose this motion at this time for another reason. There are gentlemen in the hall who have not yet had an opportunity of speaking upon this subject, who, I understand, desire to speak upon the propriety of making the judges elective by the people. For these reasons, therefore, and especially for the last reason, I hope the previous question will not now be sustained.

Mr. EARLE, of Worcester. I was about to say that I hope the motion for the previous question will not be sustained at this time. And I rather hope my friend from Lowell, (Mr. Adams,) will withdraw it. It is very evident, from the state and temper of the Convention at this time, that if the previous question is sustained and enforced, it will be no saving of time whatever; because under the existing circumstances, these amendments having been recently introduced, and having too been not very fully discussed upon this occasion, there is a disposition manifested upon the part of some gentlemen to discuss them farther. And if they are not discussed now, undoubtedly there will be a reconsideration, and the discussion will then take place. I think it is

better, when a subject is directly before the Convention, to allow it to be fully discussed, and for it to be finally disposed of, rather than to have the discussion come up upon a motion to reconsider; a motion which, of itself, opens the whole subject again to discussion. I hope, therefore, my friend from Lowell will be induced to withdraw his motion for the previous question; and if he is not, I shall be constrained to vote against it; and if the motion is lost, it cannot be made again.

Mr. BRADBURY, of Newton. I never moved a previous question in my life, and never voted for such a motion. I should, however, have voted for the motion yesterday, if the question had been taken. But I am surprised that gentlemen should confound that motion with the one which the gentleman from Lowell (Mr. Adams) now makes. Any one who knows anything of parliamentary law, or who understands anything of the mode of proceeding, must see that there can be no comparison between the two motions. The gentleman from Framinghan (Mr. Train) moved the previous question, upon a motion to reconsider a particular vote. His motion did not open the whole subject to discussion at all. But if the reconsideration had taken place, it would have opened the whole subject to discussion. If ever I could be in favor of a motion for the previous question, therefore, I should have been in favor of it then, because its effect would have been to have extended the discussion rather than to limit it. The effect of the motion of the gentleman from Framingham was to enlarge the rights of members, so far as discussion is concerned, and not to curtail it. In the case now before us, however, the effect is exactly the reverse. The motion is retaliatory in its character. Its effect is not to enlarge debate, but to curtail it. It is not to open a wider range of debate, but to close it upon the final disposal of one of the most important subjects before the Convention. I hope, therefore, the previous question will not be sustained.

Mr. LORD, of Salem, claimed the floor.

The PRESIDENT. By the rules of the Convention, the gentleman from Salem having spoken once upon this motion, cannot again take the floor until the question is disposed of.

Mr. LORD. If the Chair had understood my purpose in rising, he would not have been under the necessity of calling me to order. I am aware that, by the rules of the Convention, I am not entitled to the floor again upon this motion. I was, however, about to say, that, inasmuch as the gentleman from Lowell has introduced here a matter connected with a past proceeding in the legislature, which is personal between himself and me, I desire the leave of the Convention to give my version of it.

The PRESIDENT. The gentleman will proceed, by general consent, if no one objects.

Objection was made.

Mr. LORD. I then move that I may be permitted to speak again upon the subject, that I may reply to the gentleman from Lowell.

The motion was agreed to.

Mr. LORD. I desire to return my thanks to the Convention for giving me this opportunity for personal explanation. I knew that I had no right to speak. I threw myself upon their indulgence, and they have treated me with great kindness.

The gentlemen from Lowell (Mr. Butler) introduced here, before the Convention, a scene which was enacted in the House of Representatives during the last session of the legislature, in which he said that he and I were the actors. I propose, Mr. President, to give my version of that scene—and those gentlemen who are members of both bodies, will judge between us.

The two branches of the legislature—the Senate and the House of Representatives—met in convention; the president of the Senate in the chair. The gentleman from Lowell addressed the convention, and was called to order. He was called to order once, and he was called to order twice—he was called to order three times, and more than three times, by members—when the president called him to order. Every-body who was in that House remembers how the gentleman from Lowell then addressed the president, and said, "Who made you a dictator?"

Mr. BUTLER, of Lowell. I rise to correct a personal matter. The gentleman says this occurred on one day. Now, Sir, there was nothing said against debate on the first day, nor on the second. It was not till the third day, that the occurrence of which the gentleman speaks, took place.

Mr. LORD. I am giving my version of the affair; but I am very happy to hear that the gentleman acknowledges it to be the true version. When the gentleman from Lowell was called to order by the presiding officer, he rose and said, "Who made you a dictator?" That was the position of things. The gentleman proceeded, and proceeded, until there was very great irregularity. The difference in days, of which he speaks, is of very little consequence. The gentleman proceeded upon that occasion until it was apparent to every-body that he was, in truth, "inexperienced" in parliamentary matters—that he did not even know the rules and proprieties of the place. It was then, after he had been called

to order over and over again, that I rose to a question of order, and my question of order was this: When a gentleman speaking is called to order by the presiding officer, or by any other member, he shall sit down. I have tried, myself, to follow that rule. I complied with it two or three times this afternoon, when I was called to order by the gentleman from Conway, (Mr. Whitney). Well, Sir, upon that occasion, I raised a question of order, whether, a point of order being made, and being sustained by the presiding officer, the member decided to be out of order could proceed without leave of the House? The Chair sustained me, and a motion was made, that the gentleman from Lowell have leave to proceed. Now, will the gentleman from Lowell tell how I voted upon that motion? Will he undertake to say, that I voted against his having leave to proceed? That is the question. When he had been called to order—when he had been decided to be out of order, by the presiding officer, and when he had demanded of the presiding officer to know "who made him a dictator"—even then, did the gentleman find me voting against his having permission to speak? No, Sir. No, Sir. But when he was decided to be out of order, I suggested that permission be granted for him to proceed *in order*. The gentleman *knows* that I never objected to his debating, IN ORDER. It is not for him, therefore, to get up here and——

Mr. UNDERWOOD, of Milford. I rise to a question of order. I want to know what is before the Convention?

The PRESIDENT. The Convention have granted the gentleman from Salem leave to make a personal explanation, and the gentleman is proceeding with his explanation.

Mr. LORD. I will not trouble the Convention very much more. I merely wanted to make this explanation, that when the gentleman from Lowell was in the position which I have stated, I suggested that he be permitted to proceed in order. Now, if the gentleman from Lowell, or anybody else, ever find me, upon a question where the decision is to be final, undertaking to stop debate, they will find me in a position in which I have not been heretofore. I do not mean to say that I have not, in the legislature, voted for a motion of the previous question. I have done it a hundred times. I have, myself, moved it fifty times, but I have moved it upon motions to reconsider, and upon questions which would open the whole subject again for consideration. I have moved it where no action was proposed, and upon questions from which no harm could come. But, in cases where important action was taken, and where the decision was to be final, I have not only never moved the previous question, but I have never voted to sustain it. And this is the distinction which I think should be made just now. And again, gentlemen will do well to bear in mind that this is not a legislative assembly, where our acts will not only be subject to revision every year, but have the ordeal of two other branches to pass; but ours is a final decision, which is not subject to revision by any legislative body. And in reference to this particular case, the vote to be taken is the final vote.

Mr. HOOD, of Lynn. I rise to a question of order. The gentleman is not making a personal explanation. He is discussing the question.

Mr. FROTHINGHAM, of Charlestown. It seems to me, that in the present temper of the Convention, it will not be the wish of the majority to take this question at the present time. I rise, therefore, not for the purpose of making any argument upon the expediency or the non-expediency of the previous question at this time, but to suggest that, by a general arrangement, it may be the understanding that the taking of the question be postponed until to-morrow at eleven o'clock, and that, in the meantime the discussion may be allowed to go on.

For that purpose, and with that understanding, I will venture to ask the gentleman from Lowell, (Mr. Adams,) to withdraw his motion for the previous question.

Mr. ABBOTT, of Lowell. I certainly am in favor of the suggestion of the gentleman from Charlestown——

Mr. LORD, of Salem. I rise to a question of order. I desire to inquire if the President has decided the question of order made by the gentleman from Lynn, (Mr. Hood)?

The PRESIDENT. The gentleman from Lynn rose to a question of order, when the gentleman from Salem took his seat, and the Chair supposed he had concluded what he had to say.

Mr. LORD. I supposed it was my duty to take my seat when I was called to order.

The PRESIDENT. The gentleman from Salem was speaking out of order. He had made his personal explanation, and was discussing the question, when the gentleman from Lynn, (Mr. Hood,) called him to order. The gentleman from Salem then took his seat, and made no subsequent attempt to go on. The Chair supposed, therefore, that the gentleman had finished his explanation, and yielded to the point of order, that he was discussing the question, which he had no right to do.

Mr. LORD. I have no wish to say anything more upon this subject. I had supposed that any-

thing I was saying was not without the leave of the Convention, and that as long as I conducted myself with propriety, I had the leave of the Convention to proceed. But, Sir, it is my custom to sit down when I am called to order, and having got a little used to it, it becomes natural for me to sit down as soon as I see certain gentlemen get up. [Laughter.]

Mr. ABBOTT, of Lowell. I was about to say, when I was interrupted by the gentleman from Salem, that if, by general consent, it can be understood that the question shall be taken at ten or eleven o'clock to-morrow, I am quite content that that arrangement should be made; and I think that with this arrangement my colleague, (Mr. Adams,) will withdraw his motion for the previous question. But, Sir, the responsibility of this Convention is upon the majority, and if we cannot have the general consent to fix some time, at no very distant period, for taking the question, I shall go for exercising the power of the majority, and for enforcing the previous question now.

Mr. UPTON, of Boston. The minority of this Convention have had some lectures read to them, and, perhaps, the majority would not take it amiss, if an humble member of the minority should read a lecture to them. I can see around me members of this Convention, certainly more than one gentleman, who had the honor some ten or twelve years ago, of holding seats in the legislature, in another part of this building. If I recollect aright, the division of parties then was as eighteen to twenty-two. I happened to be a member of the dominant party, and I will say in regard to that minority of eighteen, that they were a set of men who were incessantly talking, much worse, if anything, than even the minority of this Convention; and it was necessary in some way to check debate, and bring our labors to a speedy conclusion. Being a member of the majority, I proposed what I considered a very simple way to dispose of the whole thing, and that was, to let the minority go on and talk, without any hinderance on the part of the majority. Well, they did go on and talk, and after they had made five or ten speeches upon their side, and spoken all they wanted to, we would then take the question, and vote them down. I propose that the majority in this case should allow us the minority to go on and talk. If they are right in their propositions, for Heaven's sake, give us a feeble chance to use the few arguments which we may have. If they are good for nothing, no harm can come, and the majority can at all events vote us down.

Mr. HOOPER, of Fall River. I happened to be one of those to whom the gentleman from Boston, (Mr. Upton,) alludes, as I was a member of the Senate at that time. I would remind the gentleman, that it was under different circumstances from those in which we are placed here, that that course was pursued. In a body of only forty-four, a majority of twenty-three could very easily come to an understanding and settle such a matter; but it would be a very difficult matter to decide this question by a lobby understanding, and then come in here and be prepared to vote down the minority.

The PRESIDENT. The Chair must remind the gentleman that the question is upon ordering the main question.

Mr. HOOPER. I stand corrected, but I was only following in the track of other gentlemen.

Mr. ADAMS, of Lowell. Notwithstanding the insinuations made by the gentleman from Salem, (Mr. Lord,) I made the motion for the previous question upon my responsibility as a delegate to this Convention. I made that motion, because I believed then, as I do now, that it was the desire of the Convention, that debate should cease; but as it seems that a motion for the previous question involves the history of the last legislature, and the character of the gentleman from Salem, (Mr. Lord,) and that a discussion of these subjects would probably engross more time than the question of the judiciary, which has been before us for several days, I rise for the purpose of withdrawing that motion, and make a motion to lay the Orders of the Day on the table, so that the gentleman from Charlestown, (Mr. Frothingham,) may make a motion for an assignment of a particular hour when the question shall be taken. I therefore withdraw the motion for the previous question, and move that the Orders of the Day lie upon the table.

Mr. BRIGGS, of Pittsfield. It seems to me, that this course is hardly necessary, for I believe, judging from my own feelings, however, that the unanimous voice of the Convention will be given to such a proposition, liberal as I consider it to be. If the Chair will submit the question, whether it is the unanimous voice of the Convention, that the question upon this subject shall be taken to-morrow at eleven o'clock, it is the strongest expression which we can have, and no one can rise with a good grace, hereafter, and interpose any objection.

Mr. GARDNER, of Boston. I rise to a question of order. I presume the gentleman from Lowell, (Mr. Adams,) has no right to withdraw the demand for the previous question, when the yeas and nays have been ordered. If the Convention give unanimous consent to the gentleman from Lowell, that he may withdraw his motion,

they may be understood as tacitly assenting to an arrangement to take the vote to-morrow at eleven o'clock.

The question was then taken upon Mr. Adams's motion, that the Orders of the Day lie upon the table, and it was decided in the affirmative.

So the Orders of the Day were laid upon the table.

Mr. FROTHINGHAM, of Charlestown. I move that the question in relation to the Judiciary be taken to-morrow, at eleven o'clock.

The motion was agreed to.

On motion of Mr. FROTHINGHAM, the Convention then proceeded to the consideration of the Orders of the Day.

The PRESIDENT. The question pending, is upon the amendment of the gentleman from Fall River, (Mr. Hooper,) and the gentleman from Lynn has moved that when the question be taken, it be taken by yeas and nays.

The yeas and nays were ordered.

Mr. HILLARD, of Boston. I would ask if the amendment of the gentleman from Fall River, (Mr. Hooper,) will not open the whole subject for discussion?

The PRESIDENT. The Chair rules that the whole subject is open for discussion.

Mr. HILLARD. Whatever be our shades of opinion, and to whatever party we belong, we all agree in one thing—in a habit of exaggeration and over-statement in debate. We all magnify the evils of a system we deprecate, and the benefits of that to which we wish to cling. While opposing the amendment offered by the gentleman from Worcester, (Mr. Knowlton,) to which I shall confine my remarks, I wish at the outset to make the magnanimous concession that I do not believe that chaos will come again if we do adopt that amendment in Massachusetts. I concede that life, liberty, and property, and rights, will still be secure in Massachusetts. The elements that have given us a good judiciary hitherto, will operate to give us a good one still, whatever may be the tenure of office, and whether judges be elected or appointed; and those elements reside in an enlightened state of public opinion, in a learned and upright bar, and in the liberal compensation which we give to the judges; and therefore I would admit that we have before us now, substantially, a comparison of advantages and not of disadvantages. I am willing to go a little farther, and admit that there may be some possible advantage secured to us by adopting the amendment of the gentleman from Worcester. I admit, if there be a tendency in a judge to discourtesy of manner or habits of indolence and procrastination, that periodical accountability may serve to correct those tendencies; but I think that those advantages, if they be advantages, are more than counterbalanced by the consideration that if you apply the limited tenure you will have, in the first place, to choose your judges from a region of the bar inferior to that from which you now can select them; and that in the second place, you impair the independence of the judiciary. In regard to both of these positions I think there can be no doubt. Take the case of a leader at the bar, who is considering the question of a seat upon the bench. He understands that he must sacrifice one-half of his income, at least, by so doing; but he reflects that the function of a judge is higher than that of an advocate—that the office is honorable and useful, dignified and secure. He therefore consents, in consideration of these equivalents, to a pecuniary sacrifice. But take away the life tenure, make the seat insecure, and you deprive it of one of its primal attractions. The same class of men will no longer ever think of going upon the bench; and you will, therefore, be compelled to extract your judges from an inferior stratum of the bar. As to the second position which I laid down, that the independence of a judge must be, and will be, impaired by the consideration that at the end of a certain period his claim to a reappointment must be submitted to the pleasure of the executive, it needs not to be maintained by any course of reasoning. He who has not come to this conclusion from his own self-consciousness, and from his observation of humanity, cannot be led to it by argument. There is no security for judicial independence but that furnished by the tenure during good behavior. My friend and colleague, (Mr. Giles,) objects to the judicial tenure in Massachusetts because it is a freehold. I thank him for that word. I rejoice that judges in Massachusetts have their seats by a freehold, and not a slave's-hold. Where you have dependence, you have some slight taint of slavery. I use this word in no offensive sense. As independence and freedom are correlative terms, so are dependence and slavery. That is what I mean by the expression. I admired the adroitness of my colleague, (Mr. Giles,) in his choice of language. In speaking of the judges, he contrasted their independence of the crown in England, which he approved, with the support of the people in America, which he said the judges needed. I admired his adroitness in avoiding the words dependence on the people. In my judgment, as judges ought to be independent of the crown in England, so they ought to be independent of the people here. It is no answer to these considerations to say that in point of fact, as a general rule, the executive, in obedience to the

popular will, will reappoint a good judge. This may or may not be true, and the question is: what effect will the element of contingency, however slight, have upon the judge himself? This will depend upon his temperament. Will any one give bonds that a faithful discharge of duty will secure a reappointment? If not, his future will be darkened with doubt; and so long as the mind of the judge is like a pendulum, alternating between hope and fear, his independence, and consequently his value as a magistrate, must be impaired.

The gentleman for Wilbraham, (Mr. Hallett,) wishes to make the bench accountable and responsible to the executive, and through him to the people. As I understand these words, I deny their application to the relation between the bench and the people. One man is responsible or accountable to another, when the latter has the right to call the former to account, or make him respond. Such is the relation between master and servant, and principal and agent. A judge is responsible to the legislature, because he may be impeached or removed by address. He is accountable to God and his conscience, as all men are. He is amenable to public opinion, as are all men clothed with public trusts. But that he is, or ought to be, directly or idirectly responsible to the people as such, I respectfully deny. For what purpose is a judge put upon the bench? Is it to do the will of the people? By no means: it is to do justice between man and man. In doing this he may be called upon to act in direct opposition to the will of the people. And can he be, ought he to be, removed for that? And if not, how can he be said to be responsible to the people. It is said that if you appoint judges for life, why not choose the executive for life? The answer is found in the different functions of the two departments. The executive is chosen to execute the will of the people. The moment he ceases to do that he ceases to stand in a proper relation to them. He is, therefore, chosen often enough to reflect the popular mind in all its changing moods. The gentleman from New Bedford, (Mr. French,) who took part in this discussion, laid down some positions from which I presume the gentleman for Wilbraham, (Mr. Hallett,) would recoil. But I submit that the difference between them is merely in degree and not in kind. The former gentleman pushes to its extreme that principle of popular accountability which the latter laid down as a cardinal point in his creed. One travels seven stages upon the road, and the other to the end.

There have been cases in the history of this country, where, I think, we can see that the tenure for years would have worked injuriously, or at least, it might have done so. In the early part of this century, there occurred at Richmond, Virginia, a memorable trial, which some of the elder members of this Convention will remember, the trial of Aaron Burr, for high-treason. I suppose it is no injustice to the eminent person who then occupied the executive chair of the United States, to say that his feelings, both as a man, and as a political leader, were strongly interested in the result of that trial, and that his influence was given, so far as it was consistent with the decorum of his high office, towards procuring the conviction of that distinguished offender, if I may so call him. The presiding judge at that trial, was John Marshall, a man, who then and there, as in his whole judicial life, presented the living image of that ideal and perfect judge, so beautifully drawn by my distinguished colleague, the attorney-general, (Mr. Choate). John Marshall was incarnate justice, embodied reason,—and not to speak it profanely,—conscience made flesh. Now had the judges of the supreme court of the United States been appointed for years instead of for life, in the first place, would such a man as Marshall have been likely to have been on that bench? And in the next place, would an average man, such as the tenure for years would probably have secured, with his mind alternating between hope and fear, as to his reappointment, have held the scales of justice with so firm a hand as did that great man? Would he have resisted all external pressure, as well? Let those who can estimate the infirmities of humanity, answer these questions for themselves.

That eminent man passed through a long and illustrious judicial life, and towards the close of it, he was a member of the Constitutional Convention of the State of Virginia, and when he was there this question of the tenure of the judges came up, and I will ask the attention of the Convention to listen for a moment to the words of wisdom and truth which he then and there spoke:—

"The argument of the gentleman," he said, "goes to prove, not only that there is no such thing as judicial independence, but that there ought to be no such thing—that it is unwise and improvident to make the tenure of the judge's office to continue during good behavior. I have grown old in the opinion that there is nothing more dear to Virginia, or ought to be more dear to her statesmen, and that the best interests of our country are secured by it. Advert, Sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting, between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in

the performance of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security, and the security of his property, depends upon that fairness?

"The judicial department comes home in its effects to every man's fireside—it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to control him but God and his conscience?" "I acknowledge, that in my judgment, the whole good which may grow out of this Convention, be it what it may, will never compensate for the evil of changing *the judicial tenure* of office." "I have always thought from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."

Mr. President: I had other considerations to urge, but the Convention does not seem to be in a mood to listen, and therefore I obtrude myself no farther upon their patience.

Mr. BOUTWELL, for Berlin. It seems to me, Mr. President, that there are three main points in the proposition of the gentleman from Worcester. I am opposed to the amendment submitted by the gentleman from Fall River, (Mr. Hooper,) and every proposition for an elective judiciary, which contemplates the reëlection of the same individual.

I think it worth while to consider how far our law tribunals should be independent, notwithstanding what has been said of the importance of the absolute independence of the judiciary. I would have the judiciary independent, so far as this, that they may always feel at liberty, and under the strongest inducements to do right; but a proposition which places the judges under any motive, or gives them any other than such opportunities for independence of the people as are absolutely incident to the system, is certainly wrong. By that, I mean to say, I go for an independent judiciary so far as this: that they may always be at liberty to give, and be protected in giving, just decisions between man and man. But an independence which leaves the judiciary at liberty to be indolent in the discharge of their duties, to be regardless of the rights of individuals,—and they are human as well as other men, and they may, under some circumstances, be left to disregard the rights of individuals,—or even an independence which goes no farther than this, to leave the judges at liberty to be bad-mannered to the bar,—though I suppose the bar are able to to take care of themselves,—is, in my judgment, wrong, and I wish the judges to be so dependent that they shall always respect parties and persons in court—the witnesses and jurors especially.

Now, how does the proposition of the gentleman from Worcester affect the appointing power? If it prevail, will the appointing power be as able to select proper judges as now? I take it, that so far as the nomination is concerned, it does not affect it, and therefore the appointing power remains the same. Another tribunal—the Senate—is, however, the confirmatory body. Now it is the Council. If the amendment of the gentleman from Worcester prevails, the Senate will be the confirming power. I have no great choice to which of these tribunals these nominations are sent. If the Council is made a popular body it will represent the people of the Commonwealth, but it will not be quite so much a popular body as the Senate, inasmuch as each member of the Council will represent a larger constituency. But it does not appear to me that any essential difference will result from sending the nomination to one body rather than the other; therefore no great objection can be made on that head. Nor will it happen, as suggested by the gentleman for Manchester, (Mr. Dana,) that these appointments will be much more frequent under the seven years' tenure than now. The judges of the court of common pleas, on an average, according to the statistics—and they never lie—hold their offices five years, and the judges of the supreme court hold theirs thirteen years; therefore it will happen that there will be about as many opportunities for the exercise of the appointing power under the existing as under the proposed system; and consequently, so far as regards the appointing power, the new system is substantially the same as the old one.

I come, now, to the next consideration—that of the character of the men who will be appointed under the new system, as compared with the character of those appointed under the existing system—whether the judicial standard will be lower than heretofore. Gentlemen say you will not get men of the same standing as lawyers as the men that you get now, that gentlemen have already been known to decline seats upon one or the other of the benches of the Commonwealth. It may be so, it is true; but so far as I know, the cases of declination are not of a nature to be affected by the proposed change. Every-body sees, that if a man goes upon the bench, and it proves an unfortunate appointment, and he finds it to be his duty to resign, his position in society will be thereby affected, and his means of acquiring a livelihood will be affected also. It is likewise true that a public position anywhere, in the House of Representatives of Massachusetts,

in the Senate, or in Congress, as well as upon the bench, does affect unfavorably a man's position as to the means of acquiring a subsistence in other and different pursuits. There is no doubt about that; but then it happens, notwithstanding all these considerations, that men take these various places. My friend from Salem, (Mr. Lord,) has come to the general court for several years, at a great pecuniary sacrifice, I have no doubt. Other gentlemen do the same thing, knowing that the moment they enter upon public life their means of livelihood will be unfavorably affected. Men do not decline these places. I do not believe that one in ten of the cases of declination of a seat, either upon the bench of the court of common pleas, or that of the supreme court, has been on account of the character of the office. Nor do I believe that the declinations would have increased if the tenure had been seven years, or ten years, instead of a life tenure. These declinations do not come from the character of the office, but are in consequence of the fact that it is an office where the salary is limited, and that it takes a man out of his accustomed pursuits, for which he has more taste than for judicial life.

I believe it will happen that men of the same character will go upon the bench under a seven years' tenure as under a life tenure; men who are inclined to these offices will accept them, and men who are not inclined, who prefer to remain advocates at the bar, will not go upon the bench, whatever may be the tenure or salary—that is, whatever salary the Commonwealth will be likely to establish.

Therefore, I come to the conclusion, on the second point, that the standard of judicial character, will be as high under the proposed, as under the existing system.

I come now to another point, and that is, whether, in consequence of the limited tenure of the office to seven or ten years, the character of the judges will be affected; that is, whether they will be independent so far that they will render just decisions and interpret the law correctly between man and man in court. I proceed first on the common and well-known principle that honesty is the best policy, and that if a man desires a reappointment ever so much, he will see that from mere motives of policy he should do the very best that he can. In the first place, the appointing power possess a degree of intelligence, I take it, when it is confided to forty-one men, selected from the Commonwealth, which will save it from those influences which are merely popular in their nature. And secondly, there will ever be in Massachusetts, in the executive department, and in the Senate, an amount of intelligence which will enable these two departments of the government to discriminate between that opposition which is popular, transitory, and unfounded, sometimes existing against upright persons, and that opposition which is really and substantially based in the incompetency of the man. And if that is not so, if it be true that these two departments of the government will be unable to determine whether the opposition which may exist against a reappointment is a well or ill-founded opposition, I take it that our government, for all purposes of good, is substantially at an end.

Now, with this view, believing in the first place that the appointing power will be equally competent; that secondly, the judicial standard will be as high; and in the third place, that the judicial character will be as pure, I come to the conclusion that the proposition submitted by the gentleman from Worcester, is altogether safe.

Now, what are its advantages? I have only one thought to submit in reference to the advantages to be derived from a limited tenure. It has happened in Massachusetts, it has happened in every State in this Union, that men have been appointed to seats on the bench who were unfit for the places. Some of them were known, perhaps, by those who were intimate with them, to be unfit when appointed, but all the facts were not before the appointing power. It has also happened that some men, very well fitted for advocates at the bar, fail altogether upon the bench. Now, it is a great public calamity that a man should be appointed under a life tenure to a seat on either bench in this Commonwealth, who proves incompetent to the discharge of its duties. And I think that if there were hardships, if there were even evils growing out of the proposed change, very many of them would be fully compensated by this consideration; that under this limited tenure, you have an opportunity to get rid of a bad judge. A judge may be very bad—I do not know much about courts, but I know something of human nature—and a judge may be very bad, and yet keep himself so far within the line of duty that he is not subject to removal by address or impeachment. I think that the limited tenure will operate well. Our good judges will be continued. There is a conservative feeling in Massachusetts, and if a judge during seven years shall sit impartially, shall hold the scales of justice even between man and man, whatever may be his political opinions, I say there never has been an administration strong enough to resist that popular voice which will demand his reappointment. And on the other hand, if it shall happen, as it has happened, and must happen, that occasionally you get a judge unfit for the duties he is

called to perform, this is the best way, without public action or general effort, to remove him. Now, then, trusting to the people, the executive and legislative departments as the representatives of the people, and wishing to have a conservative and just influence which will ever protect a man in Massachusetts, in the faithful discharge of his duties as a judge, I am ready, for one, to vote for the proposition submitted by the gentleman from Worcester.

Mr. GRAY, of Boston. As this question has been so long and so ably discussed, and most of the arguments which could be adduced upon it, are exhausted, I trust that the Convention will do me the justice not to expect that I can offer much that is new or unknown, and I shall endeavor not to offer much in quantity, but confine myself simply to a few suggestions which have occurred to my mind. I should not perhaps have done this, was there not an important point in this question, which has been ignored, and overlooked in the discussion of this subject, and especially by those gentlemen who have spoken upon the opposite side. From their remarks, it would seem as if we based this proposition to continue the tenure of the judicial office as it is, on English experience. Now, Sir, I throw aside all the experience of England. When the Convention of 1780 assembled, they had none but English experience to enlighten them in their legislations upon this subject; and the same arguments which have, during this debate been urged against the existing tenure, would have been exceedingly appropriate at that day. But I am guided by the experience of America, by the experience of more than three score years and ten; and what has it been? Let gentlemen open with me the volume of the history of Massachusetts, and I submit to them and to you, Sir, if there is a prouder page in it, than that which records the history of its judiciary? We have had judges for the last seventy years; they must have been somewhat numerous in the course of that time, and yet has there ever occurred a single instance where a judge has been accused of holding the scales of justice in an unequal and partial manner, upon the bench he occupied? We have had at times, it is true, judges who have been obnoxious to large portions of the community, on account of their extra judicial conduct, so to speak; who have been held up as politicians by one party, and of course zealously opposed by the other; subjected to the attacks of their adversaries who, in the depth of their animosity, would gladly have seized upon any charge of partiality or injustice of the bench, had it been vulnerable upon that point, as the strongest argument that could be brought to bear against them. But, notwithstanding these animosities, never, to my knowledge, has a judge sat upon any bench in our State, who has ever been, or ever could be, accused in the slightest degree, of soiling his ermine, or who has not been honored for the uprightness, the ability, and impartiality with which he has discharged the duties of his office. I would ask, then, is it any ultra conservatism; is it any blind reverence for what is old; is it, to use a more popular than elegant expression, any old fogyism, that makes gentlemen hesitate in departing from a system which has been productive of so many beneficial results, and brought forth so many good fruits? For one, I am not disposed to change at all, certainly so long as the maxim of old holds good: that by their fruits we shall know them; which has both reason and Scripture for its foundation.

My friend for Berlin asks the question whether we are in any danger of lowering the judicial character? and here is where, in my opinion, the whole merits of the question rest; and it is here that I take issue with him. Everything else is comparatively unimportant. Now, there is one argument upon this point to which I think allusion has not been made—or if so, it has been in an indirect manner—which is this: under our present judicial system, when a judge is appointed, he knows that he can occupy his situation so long as he behaves himself with ability and integrity; and that there are only two processes of removal, one of which is by impeachment, and the other by an address of the legislature. He feels that he is not to be brought up as a candidate for reëlection every seven years, subject to all the vicissitudes of change in party or sentiment, but is to retain his office in peace and quietness during his life; in a word that he is provided for. And what is the consequence? He may be called by the people to occupy a higher position in the arena of life, or some extraordinary event of the kind may occur; or it may please Divine Providence to remove him by death at an early day; but aside from these contingencies, he considers himself fixed, stationary for life, and he gives his whole attenion, *his heart* to the duties before him! His soul is in his work! I utter these words with emphasis, because they are significant, and in the present instance have more than an ordinary meaning. With his family around him, and provided for, he feels no solicitude in regard to what he shall do for them seven years hence; he feels that he will not be compelled, at the expiration of his term of office, to prepare himself once more, and enter the field with younger competitors, when he has not had

an opportunity to make himself capable of meeting them in that capacity.

Sir, the work of a judge, as gentlemen well know, is very different from that of an advocate, requiring great judgment and discretion, and the highest order of talent, from the fact that he is compelled to cope with the greatest genius of the land. I do not mean that every judge must have the intellectual capacity of a William Wirt, or a Daniel Webster; there could be few candidates for such an office, if we exacted that; but he is to meet the shrewdest men in the land, sift their arguments, guard against their sophistry, and regard the case in question fairly and clearly, when the ingenuity of the ablest men in the community is engaged in throwing a false light upon it; he has to do justice between party and party in the matter of property; and not unfrequently has he to administer justice and mercy to the poor criminal who stands before him pleading for life and liberty. In a word, we commit to him the highest power; I mean the power of fixing the sentences of criminals brought before him, for any period from one day in the House of Correction, to imprisonment for life in the State Prison.

But the question has been asked, does it not make them too independent, to allow them to retain their office for an unlimited time? I reply, as I have before stated, that for any positive fault or misdemeanor, they are liable to be removed by either one of two processes: first, by impeachment; and next, by an address of the legislature. Will not this satisfy gentlemen? Here is the legislature, the most important of any of the departments of government, the branch that make our laws; and that body can, with the concurrence of the governor and by a simple majority only, remove any person holding judicial authority, against whom the charge of misdemeanor can be satisfactorily sustained.

There is another point to which I think allusion has not been made: In my own political experience, which has been neither the longest nor the shortest of many in this body, I have seen governors of all parties, those who have been opposed to what has been my constant political creed, as well as those in favor of it, appoint judges for life; and in all cases of that kind, without a single exception in my knowledge, they have felt the weight and responsibility which rested upon them in the discharge of that duty, and acted accordingly. It may be that they have appointed gentlemen of their own particular way of thinking upon political subjects, but they have ever been able, competent, and upright men; who, while they have occupied the bench—whether like the present attorney-general of the United States, for a few months; or whether, like the late lamented chief justice Parker, who occupied it for more than fifteen years—have conducted themselves with discretion and ability. If, however, it should be found that a judge was not competent to discharge the duties of his office, he would be glad enough to vacate the bench, to save himself from the disgrace and mortification which would be consequent, without being compelled to do so by a peremptory removal. But my friend for Berlin says that the governor will reappoint them. I wish there might be such a state of things. I wish there might be such a state of things as Thomas Jefferson prayed for, but which has never come to pass, when the only question to be asked in such cases, would be: "Is he honest? Is he capable? Is he attached to the Constitution?" But Thomas Jefferson, when he asked that question, went contrary to its doctrine: for he said the state of things did not permit his following that rule. I have nothing to do with his conduct in that case, and make no comment, favorable or unfavorable, in regard to it. But, Sir, will it not always be so? How is it in the United States government, and what is the course of a new president when he comes into office, especially when a new and important officer is to be appointed? Does he not turn out men acknowledged to be able and competent, that he may fill their place with others? All new presidents pursue this course. And it is a much easier, a much less irksome and trying process, to avoid reappointing men, than it is to turn them out.

The question asked, is not merely upon the capability of men, but also upon their political principles. It is expected that the president will reward his friends, not those who are dishonest, but those who are qualified to discharge the duties of their office; and others who perhaps are just as capable, but belonging to the opposite party, are accordingly removed, to make way for them.

I should be very glad to agree with my friend for Berlin, who differs with me, could I do so consistently with the views which I at present entertain; and I assure him that I would never more willingly be found wrong than in the present instance. I do admit that if we limit the tenure of the judicial office to seven years, that that there may be a way of keeping up the dignity and character of the judiciary; but it is a way which, if it be advisable, is certainly impracticable. The judge who takes the office for seven years only, will demand a great remuneration for the sacrifice of the large income of his profession

which would result from the total interruption of his business, for such would be the case. He would require a salary of perhaps five, six, or seven thousand dollars a year; or you would have to select some other person, perhaps, not half so competent. The people, too, would be opposed to raising the salaries to such an extent as would necessarily be required. But how is it that men are induced to accept the office under the present circumstances? My friend says that there are but few declinations. I do not dispute his word; he has been in a situation to know more upon than subject than myself; but I venture to say that there have been more persons who have declined to take the judicial office than either that gentleman or myself may be aware of. He alluded also to the great sacrifice made by some gentlemen who were members of the legislature. I admit that there are some who do make great personal and pecuniary sacrifices, for the time being, in coming here; but there are others very differently situated. I have no doubt that my friend from Salem, (Mr. Lord,) among other gentlemen, experiences no little sacrifice of time and money, by his absence from his sphere of duty; but how long does it last? I have had but little experience myself, but I should suppose that it would be a pleasant relaxation from the laborious duties of the legal profession, to come up here and attend to the affairs of the State.

I come back to the point, however, to which I alluded in the beginning of my remarks, because it is the point which has the greatest weight in my mind. I trust that we shall not make any change in the tenure of the judicial office, as has been proposed; but I hope that the judges will be allowed to occupy their position so long as they do their duty, and satisfy the public; and if they continue in it for a longer time than that, it will be for the legislature to take the necessary steps for their removal. I have never heard, however, of but one instance where a judge has been removed by address, or where the people desired to have him so removed.

If gentlemen desire to ascertain the character of our judges, let them go to the juries, let them inquire of members of the bar, let them ask the people of the country, and they will obtain a ready response.

As I have said before, there has never existed a higher tribunal of justice than that of the supreme court of the State of Massachusetts; it is known not only for its integrity, but for the ability and legal acumen which are its chief characteristics. Our reports are read where any are read, and that too by a people not accustomed to think too highly of their cousins on this side of the water. We have the highest testimony of England, in regard to the ability and justice displayed in the reports and decisions of our judiciary. Under these circumstances, are we not excusable, and justified in hesitating to make a change in the tenure of office so important as this?

Now, there is one time of life when I think it would be a great inducement to accept an office of this character, and continue in it permanently. There is an age of life,—that is, between forty and fifty years,—when the constant toil and active habits resulting from the frequent collision of members of the bar, begins to wear upon men; when they find that they are becoming old —not superannuated by any means—but less calculated for the laborious duties of an advocate than in the early part of life. Then is the season when, if they are qualified, they are better adapted for the quiet labors of a judge, for those duties which befit the calm of their declining years. Who would have wished that Marshall should have left the bench at sixty years of age? Who would not have desired that Kent should have remained beyond sixty, had not the hour struck which, by the Constitution of the State of New York, sent him from his seat. And yet sixty years is full old for active legal practice.

But, on the contrary, go to a man who occupies an active position as a practising lawyer, a man of talent, one who possesses all the essential attributes of a good judge;—ask him to accept that office, and how will he reason? He will say, by my practise I am now making several thousand dollars a year, and I am unwilling to give that up for the sake of a mere temporary office, with the prospect, in a few years, that I shall be compelled to vacate it and return to my practise, which will then require more activity than will be suited to my temperament; but give me this place with the privilege that if I demean myself in a proper manner, I can hold it until I am seventy years old or more, and I will accept it. This is the manner in which he will consider the subject. The office of judge is one that is, and has ever been, held in high honor, I had almost said idolatry, by the people of Massachusetts; and they desire to see it ably occupied. Let gentlemen go into any town where a court is in session, and see how the judge is looked up to with respect and honor by every one present.

It is for these reasons,—agreeing entirely that my friend for Berlin has stated the issues fairly, but believing that we shall tear down this standard of judicial officers, and that we shall not have the men of talent and worth that we have had during the past; believing, farther, that it has

been overlooked in the consideration of this subject, that the power of impeachment which still exists will effectually check corruption, if there be any; believing farther that the power of removal by address of the legislature, is a sufficient provision against all incompetency,—I feel compelled to vote against this motion to shorten the tenure of the judicial office.

Mr. SCHOULER, of Boston. Believing, Sir, that we have heard enough upon this subject for one day, and that we are so full we can take in no more, I move that the Convention do now adjourn.

The question being put, a division was called for, and it was ascertained that there was no quorum voting. The President *pro tem.* then, at six o'clock, declared the Convention adjourned.

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THURSDAY, July 21, 1853.

The Convention assembled pursuant to adjournment, and was called to order at nine o'clock, by W. S. Robinson, Esq., one of the Secretaries to the Convention, the President being absent in consequence of indisposition.

Prayer by the Chaplain.

*Election of President pro tempore.*

The Secretary read the eighteenth rule of the Convention, which directs that he shall preside, in case of the absence of the President at the hour to which the Convention was adjourned, until a President *pro tempore*, shall be appointed, which shall be the first business before the Convention.

Mr. RANTOUL, of Beverly, moved that the Convention proceed to the election of a President *pro tempore*, by nomination.

The motion was agreed to.

Mr. RANTOUL nominated HENRY WILSON, of Natick, and moved that he be President *pro tempore*, of the Convention.

The motion was unanimously agreed to.

The Secretary appointed Messrs. Briggs, of Pittsfield, and Boutwell, for Berlin, to conduct Mr. Wilson to the chair.

Mr. WILSON, upon taking the chair, said:—Gentlemen of the Convention: I thank you for this expression of your confidence and kindness. I shall endeavor to discharge the duties assigned me, with fairness and impartiality.

*Appendix to the Debates.*

Mr. TYLER, of Pawtucket, submitted the following order:—

*Ordered*, That the Committee on Reporting and Printing, be instructed to append to the published Debates, Poole's Statistical View of the Members of the Convention.

Mr. TYLER. I beg leave just to remark, that the proceedings of the New York Constitutional Convention in 1846, contain a similar table to this, and I hope that this may be appended, and that the meritorious author may obtain an honorary degree from some of our colleges.

Mr. EARLE, of Worcester, moved to amend the order, by inserting after the word "Convention," these words: "with the amount received by each for travel and attendance."

Mr. BATES, of Plymouth. Before the vote is taken, I hope the Convention will consider, for a moment, what the proposition is. It is to append to the published Debates of this Convention, a private document belonging to a gentleman who has published it for his own private emolument. Perhaps he will have something to say about our taking it.

Mr. BOUTWELL objected to the consideration of the order at this time, and asked that it lie over.

In obedience to the rule, the order lies over.

*Permission to submit a printed Report.*

Mr. BOUTWELL, for Berlin, asked and obtained permission, for the Committee on Revision to make their Report in print.

*The Judiciary.*

Mr. DANA, for Manchester, desired to be informed by the Chair, in order to determine the form of a motion which he desired to make, whether the amendment submitted yesterday, by the gentleman from Fall River, to the resolves on the subject of the Judiciary, was an amendment to an amendment, or whether it was itself susceptible of being amended.

The PRESIDENT. It is an amendment to an amendment.

Mr. DANA. That being the case, we are in this situation: no amendment can be offered now, because there is an amendment to an amendment already pending. The question on the amendment to the amendment, cannot be taken until eleven o'clock, and——

The PRESIDENT. The Chair must remark, that the Orders of the Day are not under consideration.

Mr. DANA. No, Sir. And the motion which I wish to make, would not be in order if they were.

*Hour of Adjournment.*

Mr. BOUTWELL, for Berlin, moved that two o'clock, instead of one, be fixed as the hour of adjournment during the remainder of the session.

The motion was, upon a division agreed to—ayes, 99; noes, 56.

*Orders of the Day.*

On motion by Mr. BOUTWELL, the Convention proceeded to the consideration of the Orders of the Day.

The first subject in order being the resolves on the subject of

*The Judiciary.*

The pending question being on the amendment moved by the gentleman from Fall River, (Mr. Hooper,) to the amendment of the gentleman from Worcester, (Mr. Davis).

Mr. SUMNER, for Otis. I trust that it will not be supposed from the effort I made to obtain the floor yesterday, that I am very anxious in relation to this great and important subject now under consideration, because I have lived long enough, and have had experience enough in the judicial tribunals of this Commonwealth, to understand this fact, that almost any judicial system which might be adopted and put into operation in this Commonwealth, would be made, perhaps, to a fair extent, to work tolerably well. Whether life tenure, limited tenure, appointment by the executive, or election by the people—whichever system should be adopted, it would be, as I apprehend, sustained by the people, and measurably it would effect its great purpose, viz.: the administration of justice. But, Sir, of different modes, I think there is a choice. We have hitherto existed under a judicial system of judges appointed by the executive, and appointed for life; and there is a great portion of the people, undoubtedly, who entertain towards that system—although they may not, perhaps, prefer it to all other systems—a great degree of respect. Unquestionably a proposition materially changing the present system will meet with opposition; there is a disposition, at least, to give to any proposition for change, a very thorough and close examination; and this feeling is to be countenanced and favored. Sir, in the discussion which has taken place here in my hearing—for I have not been able to be present in all the debates upon this subject—I have been very forcibly reminded of a series of discussions which I had an opportunity to hear some twenty years since, upon this same floor. There is in this Commonwealth a semi-judicial board of officers, namely, county commissioners. As originally created, they held their offices by executive appointment, and this continued for several years. Finally, however, there was a feeling pervaded the Commonwealth, to a considerable extent, in favor of a change in the manner of appointing these officers; as is well known. The people demanded, in somewhat loud terms, that the appointment of these officers by the executive should be changed, and that the people should be permitted to elect them. They accordingly preferred their applications to the legislature, and these applications for a long time met with precisely the entertainment that the proposition meets with here in regard to the change in our system as to the appointments of the judges of the court of common pleas, and of the supreme court. It was said, in the first place, that it would be unconstitutional; that if the legislature should pass a law giving the election of this board of officers to the people, the supreme court, upon a proper process bringing the question before them, would set the proceedings all aside, because, forsooth, this was a judicial office, and under the Constitution, the executive, and the executive alone, was competent to appoint. That argument had its weight, and its influence. But, the greatest difficulty anticipated, and which was put forth as an argument by those who resisted the proposal to make these officers elective, was that it would create confusion, disorder and trouble; that there would be conflicting interests in different localities; that men of influence, having this or that purpose to subserve, would enter into the arena in regard to the selection and choosing of these officers; that there would be no such thing as independence on the part of the incumbent; that they would, in their conduct, favor their friends and supporters; that they would resort to improper efforts for the purpose of securing their election, and that the consequences would be disastrous; and, beyond all this, it was believed, that it would be a great entering wedge which applied to the entire judicial system, would finally rive it asunder, so that the whole system, so honored, and so cherished, would fall to ruin, and beneath that ruin our liberties would be buried. Well, Sir, all those arguments produced an effect; the legislature looked at the matter and considered it, and finally, with great trembling, concluded to make this mighty and fearful experiment, and they gave the people the authority claimed. We have tried the experiment, and we find ourselves yet alive and above-board, like Belzoni's mummy, "revisiting the glimpses of the moon," without being destroyed. I have heard almost the same arguments in this Convention in relation to the change now proposed in our judiciary system, which I heard here in 1834, in respect to county commis-

sioners, and I could almost believe, that there were yet remaining, in some of the historical archives of the city, some of the old papers of that day, in which were set forth, not so eloquently, perhaps, or so forcibly, as the arguments of my friend from Boston, (Mr. Schouler,) or the member for Manchester, (Mr. Dana); but yet, some arguments, certainly, very much like them. After all, I am satisfied that a plan for an elective judiciary with a limited tenure, may be safely adopted.

I wish, Mr. President, to enforce the idea which I have already suggested, that there is amongst the people of this Commonwealth an ever-abiding sentiment of affection and respect towards the judiciary of the State. We are all interested in its preservation, in its uprightness, in its faithfulness, in its high character throughout; and it is upon this great fact that I think we may safely rely in giving the people power in relation to the formation of the judiciary, the choice of judges, and the preservation of the system. If different feelings prevailed—if there was a feeling of contempt towards that branch of the government—if there was a sentiment of disrespect, or anything bordering on disrespect towards the judiciary, we might well pause before we gave into the hands of the people any power to touch it; we might let the appointments be made by some authority beyond the control of the people, for the reason that the people would not be safe depositories of trust, in relation to it, because of popular aversion to its power and authority, and not holding it in proper regard.

Now, Sir, what is it that the people desire? They desire learned judges—men who are capable, honest, faithful, pure-minded, independent; such is the all-pervading sentiment throughout the whole community. That is the wish, and the sole wish of the people; and such being the fact, it is of great consequence to preserve this sentiment. But, Sir, I think that any one who looks at the present condition of things, concerning the judiciary,—and I certainly am not going to stand up here to arraign or impeach its members,—will be satisfied that it not only is becoming, but perhaps has become a matter of necessity that there should be some modification of the system, in order that this respect may be preserved. Let us suppose a state of affairs, in order to illustrate my views. Suppose, notwithstanding a desire to sustain the judges, it should happen, in the course of things, that when the members of the legal profession, with their clients, should visit the court-house, at term-time, and find upon the bench Judge A., or Judge somebody else, and instead of their going forward and trying their causes, the counsel and clients should all consent to continue their cases, preferring to take their chance when some other judge, less obnoxious, should hold the court. Suppose, too, in addition to this, that it is impossible to touch any judge, except in one way, and that one which is most obnoxious and abhorrent to the feelings of the people, viz.: by address to the executive for removal. Nobody wants to resort to that. The legislature may address the governor to remove a judge; and he has authority, with consent of council, to cause his removal; but that provision in the Constitution is but a dead letter. Nobody wishes to go to the legislature, nor do the legislature want, of their own motion, to say to the executive: "We wish to have removed from office a judge who has been ill-advisedly placed upon the bench."

Now, Sir, if such a state of things were to exist,—and perhaps it may exist,—would it not affect the kindly and desirable sentiments of the people towards the judges; and would it not of itself form a good reason for some constitutional modification or change as to the construction of our judiciary, and the appointing of our judges?

Without pursuing this subject any farther—and I repeat, without making myself any arraignment of the present judges—I have to submit, that I do believe a majority of the people of Massachusetts desire there should be some change in our judicial system; and I do not accord at all to that sentiment which seems to find some favor in different parts of this Convention, that it will not do to present this proposition to them because they are not ready to adopt it. I am decidedly in favor of the proposition for a limited tenure. I think that we have favored this system of life tenure so long that it is one of the worn out things in old Massachusetts, and that young Massachusetts requires some improvement in this behalf. When regard for any institution becomes impaired, though slightly, it is wise and prudent to see if some change cannot be made, that will restore confidence and respect. I shall vote, therefore, if I have an opportunity, in favor of the proposition for a limited tenure; and if the judiciary be made elective, I would most heartily concur in the proposal as to the length of tenure suggested yesterday, by the learned gentleman from Boston, (Mr. Giles). I would prefer a longer tenure than that which is embraced in the resolution offered by the gentleman from Worcester; but still, Sir, if it is the voice of the Convention that that should be the tenure, I have no fears whatever in regard to the trial of that proposition. I would prefer a longer time, if the judiciary be elective. I would propose such a tenure as that it should be an object to

men of talent, honesty, and character, to take judicial office; and for that purpose I would rather favor a proposition for fourteen years than for seven years.

And, Sir, I have no fears upon the subject of the eligibility of the incumbents for reelection; for, in my belief, if there is anything fixed in the minds of the people in relation to this subject, it is that they are in favor of men for the bench who are aloof, and will stand aloof from the political field. I do not think like many gentlemen here, that the great criterion in relation to the selection of judges, will be made at all, or to any alarming extent, to depend upon the political preferences of gentlemen who may be brought forward for judicial offices. I believe, Mr. President, that the people understand perfectly well, that it is for their interest to have "good men and true," for their judges; and I have yet to learn, that in an intelligent Commonwealth like this, they will be likely to act in a manner adversely to their interests. Is it not for the interest of every man, woman and child, high and low, rich or poor, in the State, that those who are invested with authority to pass upon their rights in the judicial tribunals, should be men of tried integrity, of sterling merit, of ability, and learned in the law? Is not all this for their interest, and will not the people act according to what is for their interest in the selection of their judges? Who doubts the fact?

Mr. President: I do not wish to take up time by scrutinizing, at this moment, with any great particularity, the different propositions which are before us, either as to the principal resolution, or the amendments offered. I think, Sir, that considerable improvement may be made in relation to them, and farther amendments will probably be offered; and I suspect we shall have no great difficulty in completing in proper form the propositions, so that they may be made acceptable.

And now, Sir, one word in regard to those fears which are entertained in respect to ingrafting this proposition in the proposed Constitution which is to be sent out to the people. I believe, with the gentleman from Easthampton, who briefly addressed us yesterday, that it is one of the calls of the people, that the very changes which we are now considering, should be submitted to them; and I agree with him, that one of the most acceptable propositions, as I apprehend, which can be presented to them, would be that we should give into the hands of the people the power of electing their judges, with limited tenures.

Mr. BARTLETT, of Boston. In the present attitude of the question before the House, though in my view, I trust that no one of the propositions at present offered, may prevail, and that the original Report should stand, it seems to be desirable that all projects that may be offered should have the best chance for being properly matured. As the matter now stands, we have two amendments pending; and with the vote of the Convention that the vote be taken at eleven o'clock. I do not see how farther amendments are to be reached; and therefore, with your leave, and that of the Convention, I propose to offer a resolution which was once adopted in relation to another topic—to amend the order fixing eleven o'clock for the taking of the question, so as to permit ten minutes to the mover of each amendment for the purpose of explanation, and ten minutes to any person who may obtain the floor to reply, before the main question be taken. For that purpose, I therefore move that for the present, the Orders of the Day be laid upon the table.

The motion to lay the Orders of the Day upon the table, was agreed to.

The resolution of the gentleman from Boston was then read, as follows:—

Amendments shall be admitted after debate on the main question shall cease; and the mover of each amendment shall be allowed ten minutes to explain his amendment, and the person who shall next obtain the floor, shall be allowed ten minutes for the purpose of replying.

Mr. BUTLER, of Lowell. I have long acted upon the principle, which, perhaps, I can express to the entire understanding of the gentleman from Boston, by the Latin legend, "*Timeo Danæos et dona ferentes*"—I fear the Greeks, even when they bring gifts; and therefore, as I found yesterday on the part of gentlemen with whom he acted—not on his part, I must do him the justice to say—a disposition to protract the time,—a disposition, upon the most frivolous pretexts, to put off taking the question. After they got us to postpone the question until eleven o'clock this morning, with the view of giving gentlemen an opportunity of expressing their views still farther, every-body held off, gentlemen went away, no quorum was left, and the consequence was that the Convention adjourned half an hour or three-quarters earlier than the usual time. Now, if we are to open the door to these amendments, in the manner proposed by the gentleman from Boston, their name will be legion, and the yeas and nays will be called on each, and we shall lose much more time. I am, therefore, afraid of this proposition. I am afraid that, after we get through the debate, we may have amendments offered to such an extent as will amount simply to a consumption of time; because, from the way in

which this thing was started, and the mode in which it was attempted to be made by parliamentary tactics yesterday morning and yesterday afternoon, by which the gentleman from Boston moved the previous question, and another gentleman moved the yeas and nays on the previous question;—so the thing would have been carried on, without end. I should, myself, have no objection to the proposition to give each gentleman ten minutes to explain his amendment, if I could see that the thing was to be carried out in a proper spirit; but I fear that we should have the same spirit manifested which was shown here yesterday afternoon, and that it would entirely frustrate the object of the mover of this resolution. We should have all sorts of amendments, and all kinds of terms, from seventy years downwards, the longest term, of course, being taken first, and perhaps the yeas and nays ordered upon each. I only speak thus, because I fear such would be the result. I do not, therefore, know whether it is best to vote for this resolution or not. Upon the whole, coming in that way, I have always found it safe to doubt when a gentleman gets up and says, "I hope the resolution will not pass, in any shape," and then proposes to amend it. I say, I have always found it safe to doubt in such cases. There is an old parliamentary maxim which says: "Never put your child out for his enemies to nurse;" and I trust, therefore, that this motion will not prevail; and more especially for this reason, that unless the gentleman will indicate some of the amendments which he proposes to offer, or other gentlemen their amendments, I hope the motion will be rejected.

Another thing, Sir: I have seen matters in other places—if the gentleman from Boston desires me to explain, I can do so—I have seen heads together this morning, and I have my doubts. I am safe where I am, and therefore I think it is best to remain so.

Mr. SCHOULER. I think, Mr. President, if the Convention would spend its time in some other manner than in listening to harangues from certain gentlemen here, who proceed, in all their movements and arguments, as though one class in the Convention alone had a right to make a motion, it would spend its time much more profitably than it has frequently done. Sir, no motion can be made by any member of this body not of the party of the gentleman from Lowell, without that gentleman suspecting something evil in it. Shakspeare says—

"Suspicion haunts the guilty breast;"

and if there be any truth in that observation, one might think that the gentleman from Lowell was haunted from morning till night; for no motion of any kind can be made on a certain side of the House without his seeing trouble in it.

Now, Sir, I do not know what he has seen by heads being put together this morning, but he keeps his eye all around upon the House, and if he sees a couple of gentlemen speaking together, he imagines evil in the wind. I do not know anything about this motion, but I have no doubt at all that it was made in good faith, and I presume it will be acted upon in good faith. There has been no attempt at all, since the commencement of the session—and I appeal to the candid men of this Convention if it is not true—by the minority to consume the time of the Convention. They have called for the yeas and nays upon no question, as far as I know, and have offered no frivolous motions; and yet we are daily dragooned with this kind of stuff. I trust, as we have got along so well thus far, with good feeling, and good spirits, on all parts of the House, that we will continue so to the end, and that we may consider each other as gentlemen, and not suspecting that when any gentleman offers an amendment, that he does so for the purpose of delay. I can say for myself, that I concoct and make no motion to delay the business of the Convention; and I do not believe there is any gentleman in the Convention who desires to see its close more heartily than I do, for I have business to attend to elsewhere. I would like to see the Convention adjourn on Saturday night, and I do not believe that any attempt whatever, on the part of any one, will be made to delay the action of the Convention.

The gentleman from Lowell, (Mr. Butler,) referred to the motion which I made last night. Now, Sir, it was six o'clock when I made that motion, and at the time there was not a quorum of members in the Convention. I trust I have as good a right to make a motion as has the gentleman from Lowell; and it seems that my motion was proper, because a large majority of the members then present voted to adjourn. If it were not that my colleague, (Mr. Bartlett,) wishes to speak upon this question, I should move the previous question, so as to stop this debate.

Mr. BARTLETT, of Boston. I have troubled this Convention so little, and I am so little of a stratagist, that I do not very well like to be told that I have made a motion for a factious purpose. As it is not the habit of my life to adopt a course of that sort, I put in a disclaimer. My purpose was a correct one, and with no other intent than I then avowed; and that was, that in a matter of

the gravest importance to the interests of the Commonwealth, if my own wishes should not prevail, and the proposition of the gentleman from Worcester, (Mr. Knowlton,) should not be rejected—as I hope heartily it may—I still desire, as I always do, to mature even the most objectionable project which is to be placed ultimately before the Convention, and then before the people.

It is useless to discuss farther this matter. If the gentleman from Lowell, (Mr. Butler,) had remembered that yesterday, when I proposed to ask the gentleman from Worcester, (Mr. Knowlton,) for some explanation of the practical workings of his plan, he objected—I will not say from discourtesy on his part, for probably he acted from a sense of public duty—he would have seen that I had in view, this morning, an amendment to that proposition, if it was ultimately to be passed.

Mr. EARLE, of Worcester. I do not know but that I can say what I wish to say, under the present motion. I simply wish to say that I hope the discussion of this kind may not go on. We had enough of it yesterday. I am as anxious as any other gentleman to bring the session of the Convention to a close, and, I believe the best way in which we can accomplish that end, is for each member to do what he can towards carrying along the business in the regular course, and to treat every other member present, as if he were a gentleman, and as if he meant to conduct as one. If the majority—for I may allude to majorities and minorities in such a case—if the majority adopt that principle and act upon it; if they concede to the minority every right which the minority could reasonably ask or expect, then, if they are factious, and do not conduct themselves in the spirit with which the majority act towards them, theirs is the fault. I would rather permit them in error, if error there is to be, than to be in error ourselves, in pressing them too severely. I have no objection to sustaining the previous question at this time, but I had hoped that instead of wasting the time as we have done, in discussing the mode of shortening the session, that we would take hold of the work, and by accomplishing it, shorten the session in that way—the only effectual way, in my opinion, of doing it.

Mr. ABBOTT, of Lowell. I trust that the motion of the gentleman from Boston, (Mr. Bartlett,) will not be adopted. As I understood the matter last night, and I think it was so understood in all parts of the House, it was agreed all around, that for the purpose of preventing anybody from saying they had not time to make amendments, and to discuss everything to be discussed, that all talk upon the matter should not cease until, and should cease, at eleven o'clock, to-day. I went in good faith for that arrangement, and I supposed I was satisfying every-body upon the other side of the House. Now that the arrangement has been made, I, for one, shall stick to the arrangement and agreement as it was made. I do not mean to charge anything upon anybody in this Convention, but I mean to say that we who are here in the majority of this Convention, are responsible for the length of the session, and will be held to that responsibility, and not the gentleman from Boston, (Mr. Bartlett,) and those with whom he is associated. I ask, if the gentleman himself will not, when we get through, and our labors are submitted to the people, will not charge that this Convention have set here too long? I do not mean to charge that they intend to keep us here too long, but I do mean to say that we have been here quite long enough. We are responsible, and unless we do bring this debate to an end somehow or other, and stick to the arrangement and agreement we made yesterday, I apprehend that the vote you passed a little while ago, that your session ought to be brought to an end on Saturday next, means nothing.

Mr. KEYES, for Abington. I am almost sorry that I got up, but I supposed somebody else would, if I did not. [Laughter.] I got up upon the same principle, that, sometimes when I have been in a small room where half a dozen gentlemen have been smoking cigars, I have been compelled to take one, too, to enable me to endure the atmosphere. On this occasion I have become so nervous in hearing the discussion of yesterday afternoon, repeated this morning, that I cannot sit still, but must participate in the discussion, or grow crazy, and I prefer the former. This is pretty much all the reason and all the argument I have to use here. [Laughter.] Since I find that the object of the delay granted yesterday afternoon, has not been accomplished, and is not meant to be accomplished by anybody, I suppose it was not meant to be carried out. It was proposed to delay taking the vote yesterday, for the purpose of having some discussion upon the questions before the Convention; but nobody seemed to take the floor, except the gentleman representing Otis, (Mr. Sumner,) and I confess that owing to the noise and my disturbed state of mind, I did not find out upon which side of the question he was, whether upon my side, or against it. I dare say, however, he made a very able argument in favor of the election of judges by the people.

Now, as to the proposition of the gentleman from Boston, (Mr. Bartlett,) let us look at it and see what reason there is for supporting it. I un-

derstand that he means to be understood as not favoring this bill or anything like it. What, then, does he want an amendment for? I do not think he cares enough about the bantlings of this Convention, to take care of them; and the worse shape in which they come out, the more agreeable to him. If there was any gentleman who really had an amendment which he felt sincerely desirous to offer, as a modification of this proposition, that would be an argument in favor of it, and I do not know that we should exclude it. If an amendment is presented to us, let us vote it, or vote it down, as we like it. I do not, after all, see any great deal of difficulty. Nobody seems inclined to enlighten the Convention upon the question for which action was delayed yesterday. There is an opportunity now before eleven o'clock, to make at least twenty better speeches than are usually made here, for the longer they are, the worse they are.

Mr. BIRD, of Walpole. A proposition was made yesterday afternoon, to delay taking the question until eleven o'clock this morning, as gentlemen were anxious to hear farther discussion. They wanted light, and it would not do to press the previous question. Finally, as a matter of compromise, we put off taking the question until eleven o'clock this morning. What was the result? The very moment the vote was taken to postpone the taking of the vote, almost every one of the gentlemen who were anxious for it, went out of this House as though they were shot. In fifteen minutes after that vote was taken, not one-half as many members were in their seats as there were when the vote was taken. They wanted light, did they? One most distinguished gentleman took the floor, and, failing to get a hearing, took his seat, because members would not listen to him. They wanted light, did they? Another distinguished gentleman, upon the other side, the gentleman for Berlin, (Mr. Boutwell,) took the floor—I will not say that he did not get a hearing—but certainly he was talking to empty benches, and, absolutely, about an hour after that vote was taken, we adjourned without a quorum. We adjourned at six o'clock without a quorum. And gentlemen wanted more light! Now they want to put off the question four or five hours, for more discussion. I say, that with the exception of the gentleman who just moved this motion, (Mr. Bartlett,)—I believe he remained until the close—there was hardly a single gentleman upon that side—I believe not one in favor of that continued debate—who did not go out of the House in twenty minutes after the vote was taken. I belong to the majority, but I am not to be frightened by the divisions of parties. I hope that the majority of this Convention, who are responsible for the length of this session, will delay action no longer. And I consider the course pursued yesterday by the minority as a sheer pretence, and for a hypocritical purpose.

[Cries of "Order," "Order," "Order."]

Mr. GRAY, of Boston. Mr. President: it is really hard, after having detained the Convention, or those who were here to listen to me yesterday afternoon, for nearly half an hour, and then have it said—not that I made a very poor speech, which perhaps could often be said with truth—but to have it said that I was not even here. I do assure the gentleman from Walpole, (Mr. Bird,) that I claim no more power than any other member of this Convention, and not so much as some, and, least of all, do I claim the power of being in two places at once. I submit it to the candid gentlemen of the Convention, upon all sides, that there is too much of these repeated attacks upon the minority for delaying the business of the Convention. Have the gentlemen in the majority been silent? Have they failed to do justice to their side of the question? The fault was in the ground of their argument, and the side of the question they were upon, and not in their ability or their disposition to do the best they could. I do hope—and I say it seriously—that in this Convention, which, up to this moment, has been distinguished by courtesy and comity upon all sides, that courtesy and good feeling will continue until the end, and that we shall not lose our character in that respect, however our character for wisdom may stand before the people.

Mr. DANA, for Manchester. Feeling an interest in the character and credit of the majority, of which I am one, and fearing that one or two of them are in danger of losing their temper, and that we are wasting time, I move the previous question.

The previous question was ordered.

Mr. BRIGGS, of Pittsfield. I wish to inquire of the Chair, when the hour of eleven o'clock shall arrive, and the pending amendment shall have been voted upon, whether other amendments will be in order?

The PRESIDENT. The Chair thinks they will be in order.

Mr. BARTLETT, of Boston. The object of the motion is not simply that amendments may be offered, for they fall dull upon the ear unaccompanied with explanation. If the Convention are in such hot haste that ten minutes cannot be afforded for explanation, the sooner we rise and go home the better.

The question was then taken upon the motion of the gentleman from Boston, (Mr. Bartlett,) and

there were, upon a division—ayes, 140; noes, 144.

So the motion was not agreed to.

*Orders of the Day.*

On motion of Mr. KNOWLTON, of Worcester, the Convention proceeded to the consideration of the Orders of the Day, the first business in order being the consideration of the resolves upon the subject of

*The Judiciary,*

To which an amendment offered by the gentleman from Worcester, (Mr. Knowlton,) and an amendment to the amendment offered by the gentleman from Fall River, (Mr. Hooper,) were pending.

Mr. KNOWLTON, of Worcester, by unanimous consent, modified his amendment by inserting in the fifth line, after the word "years," the following: "and, for the purpose of such confirmation, the governor shall have power to convene the Senate from time to time, at his discretion," so that the amendment as modified, would then read:—

That it is expedient so to amend the Constitution, that all Judicial Officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the governor, by and with the consent of the Senate, for the term of seven years; and, for the purpose of such confirmation, the governor shall have power to convene the Senate from time to time, at his discretion; that they may be reappointed at the expiration of such term, and that all such nominations shall be made at least seven days before such appointment.

Mr. BARTLETT, of Boston. I regret, Mr. President, that the stage of the debate is such, that every ear is weary of the discussion. I feel that all argument, all illustration that can fitly be applied to the subject, has doubtless been exhausted. But, having been necessarily absent while this most important topic has been under consideration, I am unwilling that the vote should be taken, without expressing, in some brief manner, the views which, with some experience of the working of our present judicial system, I confidently entertain.

And, now, Mr. President, allow me, summarily, to state what, in my judgment, is the precise attitude of the question. I shall not advert to the project of the member from Fall River, because I think there is a foregone conclusion with regard to that project; but I think that those who favor the project of the gentleman from Worcester, should fairly and justly be held to establish three things.

In the first place, I think they are bound to show that the present judicial institutions of the Commonwealth are, in some respects, defective. I think that gentlemen who come here to carry out speculative opinions on this subject, are bound, at the outset, to establish that the existing state of things is one which fails to meet the entire approbation of the community. They should be rigorously held to this, as forming the basis of their argument.

In the second place, if they succeed in their first step, I think they are bound to show that a learned and able judiciary can be secured under the tenure of office proposed by the gentleman from Worcester.

If those two points can be established, I think they are bound, in the last place, to make it reasonably certain that that learning and ability thus secured, will be placed in such a position of independence, that every man who has rights, or property, dependent on judicial decision, may feel, whatever may be the result, unshaken confidence in the purity and impartiality of our tribunals. These three questions, I think, are questions which should be deliberately considered and fairly settled.

Now, Sir, in relation to the first question, although I have not been able to be present during this discussion, yet, from inquiry, I am not able to find that anywhere during that debate, the suggestion has been made, that the judicial system of Massachusetts, from its earliest to its latest history, has not accomplished, or that it does not now accomplish, fully and satisfactorily, the great purposes for which it was instituted. What man has told you that human liberty, the rights of property, and all that is confided to judicial keeping, has not been well and wisely confided there, during the whole time that our judiciary has been established upon its present basis? I have heard of no such complaint, abroad or at home. But, on the contrary, if there be any portion of the institutions of Massachusetts which has, more than anything else, redounded to her credit next to her common schools, it is the marked ability, fairness and learning to be found in her judicial decisions. Wherever, in this country, the common law is administered; wherever the application of the great principles of commercial law is studied or investigated; wherever schools of jurisprudence are established, there will be found the reports of your adjudicated cases.

In the extensive collection of books forming the law library of congress, I am told, that among the best thumbed volumes are the Reports of your Pickering; a fact, if it be true, which

constitutes a proud tribute to the institution which the pending resolution seeks to alter if not impair.

I submit, then, Mr. President, that the first important position which those who support the pending resolution are bound to establish, has nothing to rest upon. That your existing judicial system is, and should be, a source of just pride and congratulation; and that it is due to common prudence to leave untouched a branch of your government that commands and obtains unusual approbation and respect.

But if this were doubtful—as it is not—and if the conclusion should be adopted that our present system requires to be modified, or radically changed; the next important question occurs: will the proposed substitute secure the requisite learning and ability?

In determining this question, the advantage of professional success, compared with a judicial position, are to be carefully balanced. You must assume that the selection of judges is to be made from among those who have reached the foremost rank of the profession, that a humiliating contrast between the capacity of the bar and the bench may be avoided. To attain such degree of professional standing, years of severe study and practise, reaching, on the average, to the meridian of life, will commonly be requisite. The present standard of judicial compensation—or, indeed, any probable measure of compensation which will ever obtain in this Commonwealth—will compare most unfavorably with the results of professional success. In this condition of things, is it probable, nay, is it even possible, that, for any lengthened period, the judicial office, with a tenure of ten years, can be an object of professional aspiration? What is to be the fate of an incumbent at the end of his term? Reappointment can never be counted on with certainty. Failing that, he is left without resource. The instances in which a return to practise at the bar has been successful—aside from the irksomeness of such change of position—are very rare. The usual resort, under such circumstances—to the habit of giving advice and opinions at chambers,—has been found to be unenduring, and from obvious causes, unsatisfactory; and your judge is left substantially stranded and helpless, on the shore of the great current with which he has heretofore mingled, and, to some extent, aided to guide.

It may be, Mr. President, that where judicial positions have ceased to be the aim of those whose experience and learning furnish the requisite qualifications, talent and industry may occasionally be found, and trained by the experience of years, to come up to the standard of judicial excellence which it has hitherto been our pride to require. But this must be the accident and not the rule; and I am unwilling to believe that this Convention will be content to subject to chance the sound and successful administration of justice in this Commonwealth.

Mr. President: There are many gentlemen in this Convention, who upon this subject are, from their independent position and large experience, qualified to testify rather than to argue the question. The journal shows that they have been heard, and I desire only to add my own convictions, that the proposed scheme of limiting the judicial tenure to a period of ten years, will fail to secure the talent and learning which have hitherto been deemed so essential to a safe and impartial administration of the law.

Mr. President: Assuming that a change in our system is required,—or, whether required or not, is to be made,—and assuming, farther, that the scheme proposed by the member from Worcester will command the requisite learning and ability in the judicial office, the question still remains, will that learning and ability be placed in a position that will secure its independence and purity?

The argument founded on the alleged average number of years, during which office has been held by the judges of this Commonwealth, if, under any circumstances entitled to consideration, can have no weight in determining this question. The practical inquiry is, whether—contrasted with a tenure during good behavior—a term of ten years will probably preserve the sense of just independence, without which, all agree, the judicial office may be a scourge or a nuisance.

This must be tested by assuming that your judges are dependent on their compensation for their support. It may not always be true, but the exceptions are too rare to be relied on in forming a system. In this condition of things—having deserted a profession to which he cannot successfully return—how can a judge, as his term approaches its end, free his mind from solicitude as to the future? and pressed by that solicitude—with no hopeful issue save a reappointment—he must be more than human, if his conduct be not, insensibly, perhaps, to himself, influenced by his position; and how important that influence may be, to what extent it may interfere with the fair and just administration of his office, must depend on the strength of his mind and character. But a system that places its magistrates in a position of possible peril from such causes, has no foundation in true wisdom.

It has been suggested that no good and competent judge need ever subject himself to unworthy

appliances, to secure a reappointment—that policy as well as duty, point to the uncompromising discharge of the functions of his office, as the true method of securing his continuance in it. I agree that acknowledged judicial eminence increases the embarrassment of displacing its possessor; but the certainty of such ultimate eminence at the outset, where one is to shape his destiny for life, can never be felt to be secure; and a fear or a doubt of its existence, when the period of reappointment arrives, may disturb the coolest judgment.

Mr. President: Judicial appointments will be made in the future—as they have for the most part been in past times—from the ranks of the dominant party, whenever it is supposed to contain persons of fit or equal qualifications. To that condition of things every incumbent must have more or less regard; and in my judgment it is vain to hope, that under the short and limited tenure proposed, the great judicial offices of this Commonwealth can be worthily filled, or their purity and independence as successfully maintained as under the existing, long-tried tenure; and I hope, as I stated at the outset, that the proposed scheme will be rejected altogether.

Mr. DANA, for Manchester. I have already had the attention of the Convention several times upon this subject, and if there is any other gentleman who desires to speak, I will yield the floor with great pleasure. I do not desire to speak upon the general subject, but upon a collateral point which I cannot speak to when it regularly comes before the Convention, by reason of the rule you have adopted, closing debate. I have an amendment, *bona fide*, which I mean to offer; and as I shall not have the opportunity under the order to explain it when it shall come up, I desire to speak to it now.

The gentleman from Worcester, (Mr. Knowlton,) proposes in his amendment that the judges shall be confirmed by the Senate. But, he has seen this morning, that his proposition would operate rather badly in one respect. That is to say, by the provision you have adopted in relation to the length of the sessions of the legislature, the Senate ought not to be in session more than one hundred days in any one year, leaving two hundred and sixty-five days in each year, in which you would have no confirming body in session. But, this morning, the gentleman from Worcester has modified his plan so as to allow the governor to call the Senate together, whenever a vacancy in any of your courts occurs during the recess. Of course, the chances are that three-fourths of the vacancies will occur during the recesses, and the governor must call together a body of forty men and keep them in session for seven days to confirm a single judge, perhaps of the court of common pleas. Yet, all that time, the Council, elected for the purpose of being a confirming body, are in session in their chamber.

Now, let us put this question to the Convention. You have a Council of nine, elected for the purpose of confirming the appointments of the governor, with nobody to confirm but coroners and notaries. They are in session a great part of the whole year. Is it, then, worth while to provide that whenever a vacancy occurs in your supreme court, or your court of common pleas, you must wait for nine months without a judge, with your courts over-crowded as they are with business, or call together a body of forty men, from the different portions of the Commonwealth, and keep them in session in the other end of this capitol for seven days, at an expense of some $1,200 or $1,400?

That objection, I think, ought to be fatal. I shall propose to amend by striking out the word "Senate," and inserting the word "Council;" because it is my wish, that whatever passes here, may pass in the best form possible; for I expect to be obliged to go before the people and defend the Constitution, when the time comes, and I desire to make it as good as I can. I do not wish to be obliged to go down to Manchester, and tell the people of that town that we must have a session of the Senate seven days—forty men here sucking their thumbs, wandering about Boston with nothing to do, at three dollars a day, and all to confirm a judge of the court of common pleas. The people of Massachusetts will not sustain such a proposition as that. It may be that the Council is unnecessary. Then do away with it. The Convention have voted to retain the Council; and influential men here, ex-councillors and ex-governors, are in favor of it on account of the pardoning power. If we have that Council, let us give them something to do. The most dignified part of their business is taken away from them. Of course, I am opposed to the whole proposition of appointing judges for the period of seven years, for I do believe that it will place the judiciary under the control of the governor too much, and will lead to cabals, and influences, and suspicions, and conditions of dependence, which I do not wish to see. But this subject has already been discussed at great length, and I do not wish to detain the Convention any farther.

Mr. KEYES, for Abington. I hope the amendment offered by the gentleman for Manchester, (Mr. Dana,) will prevail. I was surprised, I confess, to find the proposition now

under consideration, coming from the sensible gentleman from Worcester, (Mr. Knowlton). I supposed it was settled, that is was bad policy to combine two branches of the government, the executive and the legislative. If we vote to have judges appointed by the governor, that will amount to an additional necessity for a Council, and that body is a thousand times more adapted to the duties of a confirming body, than the Senate.

The Senate, as a confirming body, would be liable to all the objections which are urged against popular elections of the people; because it is a political body, and their actions upon such questions would be determined politically. The Council, as a body, may be political in its character; but it is not so likely to be guided by political considerations in its action. That is the difference between the two bodies. The Council can find out what the Senate never can find out; and, of course, as a confirming body, it is far better and more convenient. By maintaining the present system, we do not trample upon the great principle we have adopted: that no two departments of the government shall, jointly, exercise political power. I hope that the amendment of the gentleman from Fall River, (Mr. Hooper,) may be adopted, and I trust we shall vote to elect judges by the people. I wish to offer one suggestion here, in regard to what has been the tenor of the argument upon the other side. It has been held for a positive fact by all the lawyers who have spoken on that side—who may be supposed to know their own kin in the profession better than I do—that they are the most corrupt and selfish men in the community; men who cannot be trusted for a day, unless you give them offices for life. I do not mean any impertinence or any disrespect by suggesting that it seems to be taken for granted that they would be always ready to "kiss the hand that feeds them." The gentleman from Boston, (Mr. Hillard,) has informed us that if the term of the office of judge should be limited, and the election given to the people, the latter would be likely to select for judges a pack of mean and abject wretches, who would, in order to gain a reëlection, fail to discharge their duties faithfully, and violate their oaths. I desire to know if that was not the whole tenor of the gentleman's argument, from the beginning to the end, and if he did not proceed upon the assumption, all through, that a man who does not hold office for life, would, necessarily, become corrupt? I do not believe any such thing. I know how men will stoop, and how their judgments are apt to be warped in view of four-pence-half-pennies; but men placed in responsible public positions, lose a great portion of that weakness. It may be illustrated by the case of a man, who, hearing of some great crime committed, says, at once, and in the first excitement: "He ought to be hung, and if I was on the jury, I would hang him;" but put the responsibility of that office upon him, and he changes his tone immediately. I believe that this would be the effect in the case of judges. The gentleman for Otis, (Mr. Sumner,) was in favor of limiting the tenure of office, but he wanted it so long that a man, in many cases, would die before he would ever reach it. He might have as well put it at fifty as fifteen years. Such a tenure is good for nothing. Some gentlemen advocate the plan of electing judges by the people, if you will give them a life tenure; but what difference does it make whether they are elected, or appointed, if that is to be the tenure? The governor of Massachusetts can appoint, or the people can elect, good judges; but the whole argument against the people electing judges is entirely opposed to the form of government which we have adopted. The Convention have settled that the governor is not to be intrusted to appoint the least responsible and important officers; but here it is proposed that he is fit to be intrusted with the appointment of the judges, an office affecting the interests and honor of the people more than that of any other in the State. I do not understand such doctrine to be democratic doctrine. Thomas Jefferson was in favor of electing judges by the people; but men who are supposed to wear his mantle, preach a very different doctrine. But they do not quote or imitate him much nowadays. What would Thomas Jefferson's bones do if they could hear all this talk about compromise? [Laughter.] But of that I have not time to speak. The party to which I belong do not care anything about names; but it is the thing at which they look. When we support a compromise, you may be sure it will be one that has no villainy in it like that indorsed by the Baltimore Conventions.

[Here the hammer fell.]

The hour of eleven o'clock, fixed by special assignment for taking the vote, having arrived,

Mr. HOOPER, of Fall River, moved to modify his amendment, so that the second resolve would read as follows:—

*Resolved*, That it is expedient so to revise the Constitution as to require that provision shall be made, by law, for the election of all the judges and justices of inferior courts for a term of years.

The yeas and nays having been ordered on Mr. Hooper's amendment yesterday, the question was then taken, and there were—yeas, 150; nays, 236—as follows:—

YEAS.

Aldrich, P. Emory
Allen, James B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Bigelow, Edward B.
Bird, Francis W.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Case, Isaac
Childs, Josiah
Clark, Henry
Clarke, Alpheus B.
Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Cushman, Henry W.
Cushman, Thomas
Davis, Isaac
Davis, Robert T.
Dawes, Henry L.
Day, Gilman
Dean, Silas
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Earle, John M.
Eaton, Calvin D.
Edwards, Elisha
Ely, Joseph M.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, Rich'd, Jr.
Gooding, Leonard
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hapgood, Lyman W.
Hawkes, Stephen E.
Hazewell, Charles C.
Heath, Ezra 2d,
Hewes, William H.
Holder, Nathaniel
Hood, George
Hooper Foster
Hoyt, Henry K.
Hunt, Charles E.
Huntington, Charles P.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Keyes, Edward L.
Kingman, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Little, Otis
Loomis, E. Justin
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Partridge, John
Perkins, Daniel A.
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Powers, Peter
Rawson, Silas
Richardson, Daniel
Richardson, Nathan
Ring, Elkanah, Jr.
Rogers, John
Ross, David, S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Strong, Alfred L.
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Turner, David P.
Tyler, William
Underwood, Orison
Upham, Charles W.
Walker, Amasa
Ward, Andrew H.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Williams, Henry
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Allen, Charles
Allen, Joel C.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ball, George S.
Barrows, Joseph
Bartlett, Sidney
Bates, Eliakim A.
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Booth, William S.
Boutwell, Geo. S.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Caruthers, William
Chandler, Amariah
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Clark, Ransom
Clarke, Stillman
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, John
Davis, Solomon
Dehon, William
Deming, Elijah S.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Eames, Philip
Easland, Peter
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Graves John W.
Gray, John C.
Green, Jabez
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hale, Nathan
Hallett, B. F.
Hammond, A. B.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James

| | |
|---|---|
| Heywood, Levi | Peabody, George |
| Hillard, George S. | Peabody, Nathaniel |
| Hindsdale, William | Pease, Jeremiah, Jr. |
| Hobart, Aaron | Penniman, John |
| Hobart, Henry | Perkins, Jesse |
| Hobbs, Edwin | Phinney, Silvanus B. |
| Hopkinson, Thomas | Plunkett, William C. |
| Houghton, Samuel | Pomroy, Jeremiah |
| Howard, Martin | Preston, Jonathan |
| Howland, Abraham H. | Putnam, George |
| Hubbard, William J. | Rantoul, Robert |
| Hunt, William | Read, James |
| Huntington, Asahel | Reed, Sampson |
| Hurlburt, Samuel A. | Rice, David |
| Hurlbut, Moses C. | Richards, Luther |
| Jackson, Samuel | Richardson, Samuel H. |
| James, William | Rockwell, Julius |
| Jenkins, John | Rockwood, Joseph M. |
| Jenks, Samuel H. | Sampson, George R. |
| Johnson, John | Sargent, John |
| Kellogg, Giles C. | Schouler, William |
| Kendall, Isaac | Sherril, John |
| Kimball, Joseph | Sikes, Chester |
| Kinsman, Henry W. | Sleeper, John S. |
| Knight, Hiram | Smith, Matthew |
| Knight, Jefferson | Souther, John |
| Knight, Joseph | Stetson, Caleb |
| Knowlton, Charles L. | Stevens, Charles G. |
| Kuhn, George, H. | Stevens, William |
| Ladd, Gardner P. | Stevenson, J. Thomas |
| Ladd, John S. | Stiles, Gideon |
| Lincoln, Frederic W., Jr. | Storrow, Charles S. |
| Littlefield, Tristram | Taber, Isaac C. |
| Livermore, Isaac | Talbot, Thomas |
| Lothrop, Samuel K. | Taylor, Ralph |
| Loud, Samuel P. | Thayer, Joseph |
| Lowell, John A. | Thompson, Charles |
| Marble, William P. | Tileston, Edmund P. |
| Marcy, Laban | Tilton, Horatio W. |
| Marvin, Abijah P. | Train, Charles R. |
| Marvin, Theophilus R. | Turner, David |
| Meader, Reuben | Tyler, John S. |
| Miller, Seth, Jr. | Upton, George B. |
| Mixter, Samuel | Viles, Joel |
| Morey, George | Vinton, George A. |
| Morton, Elbridge G. | Walcott, Samuel B. |
| Morton, Marcus | Wales, Bradford L. |
| Morton, Marcus, Jr. | Wallis, Freeland |
| Nichols, William | Walker, Samuel |
| Norton, Alfred | Warner, Marshal |
| Noyes, Daniel | Warner, Samuel, Jr. |
| Ober, Joseph E. | Waters, Asa H. |
| Oliver, Henry K. | Weeks, Cyrus |
| Orcutt, Nathan | Wetmore, Thomas |
| Paige, James W. | Wheeler, William F. |
| Paine, Henry | White, Benjamin |
| Park, John G. | Wilder, Joel |
| Parker, Adolphus G. | Wilkins, John H. |
| Parker, Joel | Wilson, Henry |
| Parker, Samuel D. | Wilson, Milo |
| Parsons, Samuel C. | Winn, Jonathan B. |
| Parsons, Thomas A. | Wood, Nathaniel |

ABSENT.

| | |
|---|---|
| Abbott, Alfred A. | Ballard, Alvah |
| Allen, Parsons | Banks, Nathaniel P., Jr. |
| Appleton, William | Bartlett, Russel |
| Bliss, Willam C. | Kellogg, Martin R. |
| Bradbury, Ebenezer | Lord, Otis P. |
| Bradford, William J. A. | Payson, Thomas E. |
| Bullen, Amos H. | Perkins, Jonathan C. |
| Chapin, Chester W. | Prince, F. O. |
| Chapin, Daniel E. | Putnam, John A. |
| Clark, Salah | Sherman, Charles |
| Cole, Lansing J. | Stutson, William |
| Curtis, Wilber | Swain, Alanson |
| DeWitt, Alexander | Tower, Ephraim |
| Hall, Charles B. | Wallace, Frederick T. |
| Harmon, Phineas | Wilkinson, Ezra |
| Haskell, George | Woods, Josiah B. |
| Huntington, George H. | |

Absent and not voting, 33.

So the amendment was not adopted.

Mr. DAVIS, of Plymouth, moved to amend by striking out the word "Senate," in the fifth line of Mr. Knowlton's amendment, and insert in lieu thereof the word "Council;" and also by striking out the words "for the purpose of such confirmation, the governor shall have the power to convene the Senate, from time to time, at his discretion;" so that it would read as follows:—

*Resolved*, That it is expedient so to amend the Constitution that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the governor, by and with the consent of the Council, for the term of seven years; that they may be reappointed at the expiration of such term, and that all such nominations shall be made and publicly announced, at least seven days before such appointment.

Mr. CROWNINSHIELD asked for a division of the question.

The PRESIDENT. The question will first be taken upon striking out the word "Senate," and inserting the word "Council."

The question was taken, and the motion was agreed to—ayes, 213; noes, 78.

The PRESIDENT. The question now recurs upon the motion of the gentleman from Plymouth, (Mr. Davis,) to strike out the following words: "and for the purpose of such confirmation, the governor shall have the power to convene the Senate, from time to time, at his discretion."

The question was taken upon the amendment, and it was agreed to.

Mr. ALVORD, for Montague, moved to amend the amendment, by adding the following words: "and the judges now in office shall hold their offices according to their commission."

The question was taken on the amendment, and it was agreed to.

Mr. HUNTINGTON, of Northampton, moved to strike out the word "seven," in the fifth line, and insert, in lieu thereof, the word "ten."

The question was taken upon the amendment, and it was rejected—ayes, 163; noes, 180.

Mr. HALLETT, for Wilbraham, moved to amend by inserting in the first line, after the word "that," the following words: "from and after seven years from the adoption of this amendment."

Mr. MORTON, of Andover. I move to amend the amendment of the gentleman from Worcester, by striking out the word "seven," and inserting the word "ten."

Mr. BREED, of Lynn. I ask for the yeas and nays on that question.

The yeas and nays were not ordered.

Mr. BUTLER, of Lowell. After the motion to strike out "seven" has been disposed of, can the motion be renewed by simply adding a word to be inserted?

The PRESIDENT. The Chair is of opinion that such motion is in order.

The question was taken, and, on a division, there were—ayes, 186; noes, 173.

So the amendment was adopted.

Mr. STEVENSON, of Boston, moved to amend the amendment, by inserting, in the third line, after the word "Constitution," the words, "and the justices of the supreme judicial court."

Mr. HALLETT. I suppose the gentleman understands, and intends that we shall understand, that an invidious distinction is to be created between different classes of justices.

The question was taken on the amendment, and it was rejected.

The question then recurred on the adoption of the amendment of the gentleman from Worcester, as amended, which is as follows:—

*Resolved*, That it is expedient so to amend the Constitution that all judicial officers, except those concerning whom a different provision shall be made in the Constitution, shall be nominated and appointed by the Governor, by and with the consent of the Council, for the term of ten years; that they may be reappointed at the expiration of such term, and that all such nominations shall be made at least seven days before such appointment; and the judges now in office shall hold their offices according to their commissions.

Mr. BUTLER, of Lowell. I move that the vote by which the word "seven" was struck out and the word "ten" inserted, be reconsidered, and on that question I ask the yeas and nays.

The yeas and nays were ordered, and being taken, there were—yeas, 188; nays, 195—as follows:—

YEAS.

| | |
|---|---|
| Abbott, Josiah G. | Allen, James B. |
| Adams, Shubael P. | Allen, Parsons |
| Allen, Charles | Allis, Josiah |
| Alvord, D. W. | Greene, William B. |
| Austin, George | Griswold, Josiah W. |
| Baker, Hillel | Griswold, Whiting |
| Ball, George S. | Hadley, Samuel P. |
| Bancroft, Alpheus | Hallett, B. F. |
| Barrett, Marcus | Hapgood, Lyman W. |
| Bates, Eliakim A. | Hapgood, Seth |
| Bates, Moses, Jr., | Haskins, William |
| Bennett, William, Jr. | Hawkes, Stephen E. |
| Bigelow, Edward B. | Hayden, Isaac |
| Bird, Francis W. | Hazewell, Charles C. |
| Bishop, Henry W. | Heath, Ezra, 2d |
| Booth, William S. | Hewes, William H. |
| Boutwell, Sewell | Hobart, Henry |
| Bradford, William J. A. | Holder, Nathaniel |
| Breed, Hiram N. | Hood, George |
| Bronson, Asa | Hooper, Foster |
| Brown, Adolphus F. | Howard, Martin |
| Brown, Alpheus R. | Hoyt, Henry K. |
| Brown, Artemas | Hunt, Charles E. |
| Brown, Hammond | Hurlbut, Moses C. |
| Brownell, Frederick | Hyde, Benjamin D. |
| Brownell, Joseph | Ide, Abijah M., Jr. |
| Bryant, Patrick | Jacobs, John |
| Buck, Asahel | Keyes, Edward L. |
| Burlingame, Anson | Kimball, Joseph |
| Butler, Benjamin F. | Kingman, Joseph |
| Case, Isaac | Knight, Hiram |
| Childs, Josiah | Knight, Jefferson |
| Clark, Henry | Knowlton, J. S. C. |
| Clark, Ransom | Knowlton, William H. |
| Clarke, Alpheus B. | Knox, Albert |
| Clarke, Stillman | Ladd, Gardner P. |
| Cleverly, William | Langdon, Wilber C. |
| Cole, Sumner | Lawrence, Luther |
| Crane, George B. | Leland, Alden |
| Cressy, Oliver S. | Little, Otis |
| Cross, Joseph W. | Loomis, E. Justin |
| Cushman, Henry W. | Mason, Charles |
| Cushman, Thomas | Merritt, Simeon |
| Davis, Ebenezer | Monroe, James L. |
| Davis, Isaac | Moore, James M. |
| Davis, Robert T. | Morton, Elbridge G. |
| Day, Gilman | Morton, William S. |
| Dean, Silas | Nayson, Jonathan |
| Denton, Augustus | Newman, Charles |
| Duncan, Samuel | Nichols, William |
| Dunham, Bradish | Nute, Andrew T. |
| Earle, John M. | Osgood, Charles |
| Easland, Peter | Packer, E. Wing |
| Eaton, Calvin D. | Paine, Benjamin |
| Edwards, Elisha | Parris, Jonathan |
| Ely, Joseph M. | Partridge, John |
| Fellows, James K. | Peabody, Nathaniel |
| Fisk, Lyman | Penniman, John |
| Fitch, Ezekiel W. | Perkins, Daniel A. |
| Foster, Abram | Perkins, Noah C. |
| Freeman, James M. | Phelps, Charles |
| French, Charles A. | Phinney, Sylvanus B. |
| French, Rodney | Pierce, Henry |
| French, Samuel | Pool, James M. |
| Frothingham, R'd, Jr. | Powers, Peter |
| Gardner, Johnson | Putnam, John A. |
| Giles, Charles G. | Rawson, Silas |
| Gooch, Daniel W. | Richardson, Daniel |
| Gooding, Leonard | Richardson, Nathan |
| Graves, John W. | Richardson, Samuel H. |
| Green, Jabez | Rogers, John |

Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Turner, David P.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Sidney
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Jacob
Blagden, George W.
Bliss, Gad O.
Boutwell, George S.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, John
Davis, Solomon
Dawes, Henry L.
Dehon, William
Deming, Elijah S.
Dennison, Hiram S.
Dorman, Moses
Eames, Philip
Easton, James, 2d
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fiske, Emery
Foster, Aaron
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.
Kuhn, George H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Abishai
Lincoln, Fred. W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Meader, Reuben
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Peabody, George
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Rice, David
Richards, Luther
Ring, Elkanah, Jr.
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevenson, J. Thomas
Storrow, Charles S.
Sumner, Increase
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Tileston, Edmund P.
Tilton, Horatio W.
Train, Charles R.
Turner, David
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilder, Joel
Wilkins, John H.
Williams, Henry
Wilson, Milo
Winn, Jonathan B.

ABSENT.

Abbott, Alfred A.
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bliss, William C.
Bradbury, Ebenezer
Bullen, Amos H.
Caruthers, William
Clark, Salah
Curtis, Wilbur
DeWitt, Alexander
Doane, James C.
Durgin, John M.
Eaton, Lilley
Hall, Charles B.
Harmon, Phineas
Haskell, George

| | |
|---|---|
| Huntington, George H. | Stacy, Eben H. |
| Kellogg, Martin R. | Stutson, William |
| Marble, William P. | Swain, Alanson |
| Nash, Hiram | Tower, Ephraim |
| Paine, Henry | Tyler, William |
| Payson, Thomas E. | Waters, Asa H. |
| Perkins, Jonathan C. | Wilkinson, Ezra |
| Prince, F. O. | Wilson, Henry |
| Sherman, Charles | Woods, Josiah B. |

Absent and not voting, 36.

So the motion to reconsider was rejected.

Mr. HOOPER, of Fall River. I move to amend the amendment by adding at the end, the following :—

*Provided*, That no judge shall continue to hold office after he shall have arrived at the age of seventy years.

Mr. ALLEN, of Worcester. I wish to make the inquiry whether that will apply to the judges now in office, so as to remove the present chief justice from the bench?

Mr. WHITNEY, of Conway. I move to amend the amendment by inserting after the word "judge," the words "hereafter to be appointed."

Mr. HOOPER. I accept that modification.

The question was taken on the amendment, and on a division, there were—ayes, 158; noes, 154.

So the amendment was agreed to.

Mr. HALLETT, for Wilbraham. I move to amend by adding, after the words "all such nominations shall be made," the words "and officially publicly announced."

The amendment was agreed to.

Mr. ALLEN. As the vote was small, comparatively, by which the amendment of the gentleman from Fall River was adopted, to test the sense of the Convention upon the question of changing the tenure of the judicial office from seventy to seventy-five years, I move a reconsideration of that vote.

The question was taken, and on a division, there were—ayes, 168; noes, 162.

So the motion to reconsider was agreed to.

Mr. THOMAS, of Weymouth. I move to amend by inserting eighty instead of seventy.

The PRESIDENT. The motion is not in order.

Mr. ALLEN. I cannot give the reasons for wishing to substitute seventy-five, but I ask the gentleman from Fall River if he will not accept that modification.

Mr. HOOPER. I suppose the question has been decided by the last vote; but I will accept of that modification with the striking out of the words "hereafter appointed."

Mr. KEYES, for Abington. I know not how the gentleman from Fall River presumes that the question has been decided as he says, in one way more than in another. The Convention may turn two or three more somersets.

The question recurred on the adoption of the amendment offered by Mr. Hooper, of Fall River, and on a division, there were—ayes, 160; noes, 168.

So the amendment was rejected.

Mr. ALLEN. I now move to amend the same amendment, substituting "seventy-five" in the place of the word "seventy" as the limit of the tenure of the judges.

Mr. THOMAS, of Weymouth. Is the amendment which I proposed, in order.

The PRESIDENT. It is not.

Mr. BUTLER. I rise to a question of order. In filling up amendments with numbers, is it not necessary to have the highest number which is proposed, put first? When a gentleman moves seventy-five, is it not in order for another gentleman to move to insert eighty, or for me to move one hundred? And must not the question be taken on the longest time first?

The PRESIDENT. The Chair is of opinion that it is not in order, and that the motion of the gentleman from Worcester is in order.

Mr. HALLETT. I would like to make the inquiry, whether it is not out of order to propose to have a judge hold his office beyond the years allotted to man in the Scripture? [Laughter.]

Mr. KEYES, for Abington. Inasmuch as no amendment can now be offered, I propose, if this amendment is adopted, to offer an amendment inserting the words "one hundred and fifty." [Laughter.] It is known that Dr. Parr lived to that age or more, and perhaps some of our judges may.

The question was taken on the amendment of the gentleman from Worcester, and it was not agreed to.

Mr. THOMAS, of Weymouth. I now move to strike out seventy-five and insert the word "eighty."

The question was taken, and the amendment was rejected.

Mr. STETSON, of Braintree, moved to amend the resolution so that no judge should continue to hold office after he shall have arrived at the age of seventy-two years.

The motion was not agreed to.

Mr. DANA moved to amend the resolution by adding the following words :—

Provided that no judge shall continue to hold

office after he shall have arrived at the age of seventy-five years.

Mr. BUTLER inquired whether that amendment applied to the present judges, or those which should be hereafter appointed.

Mr. DANA said that it was intended to cover both classes of judges.

Mr. KINSMAN, of Newburyport. I would inquire of the Chair, whether the Convention have not already passed upon this subject, by a previous vote that judges shall continue in office according to their present commissions? If that is the case, it seems to me that the gentleman for Manchester cannot attain his object unless he moves a reconsideration of that vote.

The PRESIDENT. The Chair will state the question. The resolution closes with the following words: "they may be reappointed at the expiration of such term, and that all such nominations shall be made and publicly announced at least seven days before such appointment; and the judges now in office shall hold their offices according to their commissions: *provided*, that no judge shall continue to hold office after he shall have arrived at the age of seventy-five years." The Chair is of the opinion that the motion made by the delegate for Manchester is in order.

Mr. CHAPIN, of Worcester. I would like to ask, if our best judge now upon the bench has not already attained that age?

Mr. DANA. He is only seventy-two.

The question being then taken on the amendment of Mr. Dana, on a division there were—ayes, 102; noes, 193—so it was not agreed to.

Mr. GOOCH, of Melrose, moved to amend the resolution by striking out the words "according to their commissions," and inserting in lieu thereof the words "for ten years from the adoption of this amendment."

The PRESIDENT ruled the amendment out of order.

Mr. GOOCH. If my amendment is not in order in its present shape, I move to reconsider the vote by which the amendment of the gentleman from Montague was adopted by the Convention, in order that I may move this amendment.

The question being then taken on reconsidering the vote by which the following words were adopted, viz.: "and the judges now in office shall hold their offices according to their commissions," it was not agreed to.

The question then recurred on striking out the whole of the fourth resolution, and substituting therefor the amendment of Mr. Knowlton, as amended by the Convention; and the question being then taken by yeas and nays, resulted—yeas, 200; nays, 164—as follows:—

YEAS.

Allen, Charles
Allen, James B.
Allen, Parsons
Alley, John B.
Allis, Josiah
Austin, George
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradford, William J. A.
Bronson, Asa
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Cady, Henry
Case, Isaac
Chapin, Daniel E.
Childs, Josiah
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Cooledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gardner, Johnson
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Hooper, Foster
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, Charles P.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Little, Otis
Littlefield, Tristram
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.

Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Daniel A.
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rice, David
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph
Rogers, John
Ross, David S.
Sanderson, Amasa
Sheldon, Luther
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stetson, Caleb
Stevens, Granville
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Turner, David P.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel

NAYS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Aldrich, P. Emory
Allen, Joel C.
Alvord, D. W.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Bell, Luther V.
Bigelow, Jacob
Bird, Francis W.
Blagden, George W.
Bliss, Gad O.
Braman, Milton P.
Breed, Hiram N.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Hiram C.
Bullock, Rufus
Bumpus Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Carter, Timothy W.
Carruthers, William
Chandler, Amariah
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, John
Davis, Solomon
Dawes, Henry L.
Dehon, William
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gates, Elbridge
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hillard, George S.
Hinsdale, William
Holder, Nathaniel
Hood, George
Hopkinson, Thomas
Houghton, Samuel
Hoyt, Henry K.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kinsman, Henry W.
Knight, Joseph
Ladd, John S.
Lincoln, F. W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Noyes, Daniel
Nute, Andrew T.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Peabody, George
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Richards, Luther
Rockwell, Julius
Royce, James C.
Sampson, George R.
Sargent, John
Schouler, William
Sherril, John
Sikes, Chester
Simmons, Perez
Sleeper, John S.
Souther, John
Stevens, Charles G.
Stevenson, J. Thomas
Storrow, Charles S.
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Tileston, Edmund P.
Train, Charles R.
Turner, David
Tyler, John S.
Tyler, William
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilkins, John H.
Williams, Henry
Wilson, Milo
Wood, Charles C.
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Appleton, William
Baker, Hillel
Ballard, Alvah
Bancroft, Alpheus
Banks, Nath'l P., Jr.
Bartlett, Russel
Beach, Erasmus D.
Bishop, Henry W.
Bliss, William C.
Bradbury, Ebenezer
Bullen, Amos H.
Chapin, Chester W.
Clark, Salah
Clarke, Alpheus B.
Cole, Lansing J.
Cole, Sumner
Curtis, Wilber
DeWitt, Alexander
Durgin, John M.
Eaton, Lilley
Eustis, William T.
French, Charles A.
Gilbert, Washington
Hall, Charles B.
Harmon, Phineas
Haskell, George
Heywood, Levi

| | |
|---|---|
| Huntington, George H. | Sanderson, Chester |
| Kellogg, Martin R. | Sherman, Charles |
| Kendall, Isaac | Stevens, Joseph L., Jr. |
| Kuhn, George H. | Stevens, William |
| Langdon, Wilber C. | Strong, Alfred L. |
| Marcy, Laban | Stutson, William |
| Nayson, Jonathan | Swain, Alanson |
| Norton, Alfred | Tower, Ephraim |
| Ober, Joseph E. | Warner, Marshal |
| Paine, Henry | Whitney, James S. |
| Payson, Thomas E. | Wilkinson, Ezra |
| Perkins, Jonathan C. | Wood, William H. |
| Prince, F. O. | Woods, Josiah B. |
| Rawson, Silas | |

Absent and not voting, 55.

So the amendment was agreed to.

The question then recurred on the final passage of the resolutions as amended.

Mr. LORD, of Salem, asked that the question on the resolutions be taken separately.

Mr. HOOPER, of Fall River, moved to amend the first resolution, by adding at the close the following words: "and that each branch of the legislature shall have authority to require the opinion of the justices of the supreme judicial court on questions of constitutional construction."

Pending this question, Mr. PHINNEY, for Chatham, moved to adjourn; which was not agreed to.

The question being then taken on the amendment offered by Mr. Hooper, it was not agreed to.

The first three resolutions were then severally read and finally passed; and the question was stated on the fourth as amended.

Mr. LORD, of Salem. I desire to know whether, in the ruling of the Presiding Officer, a resolution which is substituted for one that it is inexpedient to act upon a certain matter, has its several readings after it is substituted; or whether, this having been adopted, the question will now be on its final passage?

The PRESIDENT. The Chair rules that this is the final passage of the resolution; and the question before the Convention is now on its final passage.

Mr. LORD. As there has never been any vote taken upon this resolution in its present shape, I ask that the question may be taken by yeas and nays.

Mr. WARD, of Newton. I rise to ask if the yeas and nays have not already been taken upon this question?

The PRESIDENT. The yeas and nays have been taken upon it as an amendment to strike out the original resolution, and to substitute this, but not upon its final passage.

The question being put on ordering the yeas and nays, on a division, there were—ayes, 59; nays, 159—so the yeas and nays were ordered, more than one-fifth of the members voting having voted therefor.

Mr. DENTON, of Chelsea, moved that the Convention adjourn.

Mr. KEYES, for Abington, called for the yeas and nays on the question of adjournment, and they were ordered.

Mr. SCHOULER. I rise to make an inquiry of the Chair. The Convention has voted to adjourn at two o'clock; and as it is not possible to take the yeas and nays between this time and two o'clock, I wish to know whether the Convention will be adjourned as soon as that hour arrives?

The PRESIDENT. By the construction of the Chair, heretofore, it will be imperative upon the Chair, at the hour of two, to adjourn the Convention.

Mr. SHELDON, of Easton, moved a reconsideration of the vote by which the yeas and nays were ordered on the motion to adjourn, which was agreed to.

The question then recurred on the motion of Mr. Keyes for the yeas and nays on the question of adjournment; and they were not ordered.

The question then recurred on the motion of Mr. Denton, which was agreed to; and accordingly, at quarter before two o'clock, the Convention adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled, and was called to order at three o'clock, the President *pro tem.* in the chair.

### *The Judiciary.*

On motion by Mr. SCHOULER, the Convention proceeded to the consideration of the Orders of the Day, the question pending being on the final passage of the fourth resolution on the subject of the Judiciary, as amended, on which the yeas and nays had been ordered.

Mr. WHEELER, of Lincoln. I would inquire whether it is in order to move a reconsideration of the vote by which the yeas and nays have been ordered?

The PRESIDENT. In the opinion of the Chair, it will be in order.

Mr. WHEELER. I will, then, submit that motion.

Mr. LORD, of Salem. Mr. President: I rise to a question of order, and that is, whether or not the matter of ordering the yeas and nays is a motion at all; whether it is not a demand which certain gentlemen, to wit, one-fifth of the Con-

vention voting, have a right to make, and which none others can control after it has been ordered? The language of the rule is: "On all questions and motions whatsoever, the President shall take the sense of the Convention by yeas and nays, provided one-fifth of the members present shall so require." That is not a motion.

The PRESIDENT. The Chair is of opinion that it is competent for every member of the Convention to move a reconsideration of the vote by which the yeas and nays were ordered, and that it is competent for a majority of the Convention to reconsider that vote. The question will then recur on the motion for the yeas and nays, and one-fifth can carry that vote.

Mr. WHEELER. Since it is likely that the motion which I made will give rise to discussion, I withdraw it.

Mr. ELY, of Westfield. I wish to inquire, Mr. President, if a vote on the subject-matter of the resolution now under consideration has not been taken by yeas and nays already?

The PRESIDENT. A motion was made to strike out the fourth resolution, and to substitute the resolution now pending, which was carried by yeas and nays. That is a different question from the present; that was a motion to amend; this is a motion to order the resolution to its final passage.

The question being taken by yeas and nays, the result was—yeas, 204; nays, 143—as follows:

YEAS.

Allen, Charles
Allen, James B.
Allen, Parsons
Alley, John B.
Allis, Josiah
Andrews, Robert
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Booth, William S.
Boutwell, Sewell
Boutwell, George S.
Bronson, Asa
Brown, Adolphus F.
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Cady, Henry
Case, Isaac
Chapin, Daniel E.
Childs, Josiah
Churchill, J. McKean
Clark, Henry
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Sumner
Cooledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Dunham, Bradish
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooding, Leonard
Graves, John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hathaway, Elnathan P.
Hayden, Isaac
Hazewell, C. C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Hood, George
Hooper, Foster
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meader, Rueben
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Parsons, Samuel C.
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stetson, Caleb
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Taft, Arnold
Thayer, Joseph
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.

Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis

NAYS.

Adams, Benjamin P.
Adams, Shubael P.
Allen, Joel C.
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Blagden, George W.
Bliss, Gad O.
Braman, Milton P.
Breed, Hiram N.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Hiram C.
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Carter, Timothy W.
Caruthers, William
Chandler, Amariah
Chapin, Chester W.
Chapin, Henry
Choate, Rufus
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dawes, Henry L.
Dehon, William
Denison, Hiram S.
Dorman, Moses
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gates, Elbridge
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Greenleaf, Simon
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Hersey, Henry
Hillard, George S.
Holder, Nathaniel
Houghton, Samuel
Hoyt, Henry K.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Kuhn, George H.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Noyes, Daniel
Nute, Andrew T.
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parsons, Thomas A.
Peabody, George
Pease, Jeremiah, Jr.
Perkins, Jesse
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Richards, Luther
Rockwell, Julius
Royce, James C.
Sargent, John
Schouler, William
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sleeper, John S.
Stevens, Charles G.
Stevenson, J. Thomas
Storrow, Charles S.
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Tileston, Edmund P.
Train, C. R.
Turner, David
Tyler, John S.
Tyler, William
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilson, Milo
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Aldrich, P. Emory
Alvord, D. W.
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bell, Luther V.
Bigelow, Jacob
Bliss, William C.
Bradbury, Ebenezer
Bradford, William, J.A.
Brown, Artemas
Bullen, Amos H.
Butler, Benjamin F.
Clark, Ransom
Clark, Salah
Cole, Lansing J.
Copeland, Benjamin F.
Curtis, Wilber
DeWitt, Alexander
Doane, James C.
Duncan, Samuel
Durgin, John M.
Easton, James, 2d
Eaton, Lilley
French, Rodney
Gardner, Johnson
Gooch, Daniel W.
Gray, John C.
Greene, William B.
Hall, Charles B.
Harmon, Phineas
Haskell, George
Henry, Samuel
Hinsdale, William
Hobart, Aaron
Hopkinson, Thomas
Huntington, Charles P.
Huntington, George H.
Johnson, John
Kellogg, Martin R.
Ladd, John S.
Langdon, Wilber C.
Little, Otis
Marcy, Laban
Marvin, Theophilus R.
Norton, Alfred
Paine, Henry
Payson, Thomas E.
Perkins, Daniel A.
Perkins, Jonathan C.
Prince, F. O.
Rice, David
Sampson, George R.
Sherman, Charles
Souther, John
Stacy, Eben H.
Strong, Alfred L.
Stutson, William
Swain, Alanson
Thayer, Willard, 2d
Tilton, Abraham
Tower, Ephraim
Wetmore, Thomas
Whitney, James S.
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Wood, William H.
Woods, Josiah B.

Absent and not voting, 72.

So the resolution was passed.

Mr. FROTHINGHAM, of Charlestown. I move to lay the Orders of the Day upon the table for the purpose of taking up Convention Document No. 54, being the Report of the Committee on Elections, in reference to the memorial of John Sanborn, from Charlestown, claiming a seat in the Convention.

The motion was rejected, on a division—ayes, 72; noes, 112.

So the Orders of the Day were not laid upon the table.

Mr. MORTON, of Taunton. There is a subject of considerable interest, which I had the honor to bring before the Convention, some time ago; and with the understanding that it should be taken up at an early day, I withdrew it as an amendment to a proposition then pending, and presented it as an independent proposition; and it was referred to the Committee of the Whole. I therefore move that the Convention resolve itself into Committee of the Whole, on Document 59. I wished to make this explanation, and then will move to lay the Orders of the Day upon the table, that the Convention may go into Committee of the Whole, and consider the alternative proposition in relation to the amendments of the Constitution. I move that the Orders of the Day be laid upon the table.

Mr. HOOPER, of Fall River. I hope that that motion will not prevail. It is only a few moments since the Convention refused to adopt the very same motion.

Mr. BIRD, of Walpole. I want to know if it is in order to make the same motion twice in succession, without the intervention of other business?

The PRESIDENT. The Chair is of opinion that the motion of the gentleman from Taunton is in order.

Mr. FROTHINGHAM, of Charlestown. I ask the leave of the Convention, at this time, to make a statement. I will not occupy more than one or two minutes.

Leave was granted.

Mr. FROTHINGHAM. I moved, a few moments ago, to lay the Orders of the Day upon the table for the purpose of going into Committee of the Whole on the Report on the subject of Banks and Banking. I did so because I had refrained for some time past from making that motion, and with a view to accommodate gentlemen who felt a strong interest in relation to other questions, which have been before the Convention. On the suggestion of some of the members of the Convention, I made the motion to lay the Orders of the Day upon the table, for the express purpose of taking up that question.

The PRESIDENT. The Chair, upon reflection, is of opinion that the motion made by the gentleman from Taunton, (Mr. Morton,) is not in order, no business having been transacted since the same question was previously decided. The next matter in the Orders of the Day, is the motion of the gentleman from Fall River, (Mr. Hooper,) to reconsider the vote by which the resolve on the incorporation of new towns was indefinitely postponed.

*Incorporation of New Towns.*

Mr. HOOPER. I moved a reconsideration of this resolution, with the view of offering an amendment. It will be recollected, that one of the resolutions fixing the basis of representation, provides that no town shall be incorporated, with the right to send a representative to the legislature, having less than fifteen hundred inhabitants. I suppose the meaning of that is, that no town hereafter created shall be represented in the legislature unless it have fifteen hundred inhabitants. But this resolution guards the matter only on one side. It does not prevent the creation of new towns having fifteen hundred inhabitants, and leaving the old town, perhaps, with less than one thousand inhabitants. For the purpose of preventing this, I moved a reconsideration, so as to guard the matter in such a way that no town should be left with less than fifteen hundred inhabitants, by the creation of any new town. That is my object; and if the Convention decide to reconsider, I will offer such an amendment.

Mr. BATES, of Plymouth. I would simply say to the gentleman from Fall River, that when this whole subject was under discussion, an amendment precisely similar to this was moved and rejected, and that, consequently, such an amendment cannot be in order at this time.

Mr. HOOPER. I think the gentleman is mistaken. The amendment which was rejected was very different from this. That amendment was, that no town should be incorporated with less than fifteen hundred inhabitants, thereby implying that new towns having that number of inhabitants might be incorporated, and be entitled to representation. The object I have in view, is quite different. It is to prevent the formation of new towns, leaving the old ones with a less number of inhabitants than fifteen hundred. I think if gentlemen will reflect for a moment, they cannot object to having the matter guarded in this way.

Mr. KEYES, for Abington. It seems to me, that the gentleman from Fall River, is a little mistaken; that these towns do not stand on the same basis; and whereas, it might be unjust in one sense, it would not be in the other. I take it, that the Convention decided for good reasons, that no new town should be created for the purposes of representation with less than fifteen hundred inhabitants; and the ground was this: before these new towns petition for a town organization they understand precisely what they have to meet with. They may have a representation, or they may not, as the legislature may determine. If they choose to be incorporated for town purposes without the representation privilege, no

injustice will be done. On the other hand, if they permit a new town to go off from the old one, and thereby take away the right of the old town to send a representative, a double injustice will be done. Suppose that a new village starts up in a town, with its railroad, and manufacturing, and other establishments, gathering around them a large population, and they say to themselves, "let us go off from the old town and leave it in its loneliness, and take with us the right of representation,"—this would not be right. I take it, therefore, that in such case, the old town ought not to suffer in consequence of the new town going off, because, if they do go off, they go with their eyes open.

Mr. SCHOULER. I hope the motion to reconsider will not prevail. It seems to me, that we ought to leave something for the legislature to do hereafter. The usual practice has been, that where a town was set off it should vote for representatives with the town from which it came out until the next decennial census. New towns can be incorporated for all purposes which appertain to town business, and nobody will be affected, but themselves; but they cannot vote for representatives otherwise than in conjunction with the town from which they were set off.

Mr. HALLETT. It seems to me, that this motion ought to be reconsidered, and for a very plain reason. You have got to provide against the indefinite increase of representation by the multiplication of new towns, and if that is not done, your system of town representation is not safe. You cannot well leave the matter unguarded in this way, so that a town having twenty-five hundred inhabitants, may set off fifteen hundred of them, to be incorporated and entitled to a new representation, and still retain its own representation with a population of one thousand. The legislature may guard against it, but if they do not and we leave the matter in this shape, then, as I showed the other day, a town having four thousand inhabitants, and sending two representatives, may be divided into three towns, sending three representatives; and there is no knowing where the effect of such a thing is to stop, if the legislature connive at it. It seems to me, that we should not leave a loop-hole of this sort in the principle of representation. If this thing is to remain so, you had better declare at once, that your basis of representation shall be fifteen hundred for a representative in every town. If you say, in this implied manner, that there shall be as many towns sending representatives as your old towns will make, by dividing their population by fifteen hundred, you may have the House of Representatives enlarged to an impracticable extent. What would be the result? What would be the danger? Why, that in case of any extraordinary political pressure, your legislature would create so many new towns in order to accommodate the condition of political parties. Every-body knows this. Every-body can see it at a glance; and the question would at once be: what will be the political character of the representative who will come from such and such a new town, if it is created?

Now, if this motion is reconsidered, you can then adopt a principle such as is suggested by the gentleman from Fall River; or you can say upon a general principle that no incorporation of any new town shall thereby increase the representation within the limits of the old and new town together; and then you leave the matter so that if a town chooses to divide, it may do so; but it shall not divide at the expense of the whole representation of the State. I think that that is a sound reason; a good ground why this motion to reconsider should prevail; so that this salutary precaution may be adopted.

The question being taken on the motion to reconsider, it was decided, on a division, in the affirmative—ayes, 130; noes, 114.

The PRESIDENT. The question now is on ordering to a second reading the following resolve:—

*Resolved*, That the Constitution be so amended that hereafter no town shall be incorporated with less than fifteen hundred inhabitants.

A MEMBER. Is not the first question on the motion to postpone the farther consideration of the resolution indefinitely?

The PRESIDENT. That is the first question.

Mr. HOOPER, of Fall River. I wish to amend the resolution as follows: strike out all after the word "town," in the second line, and insert the following:—

The number of whose inhabitants shall be reduced below fifteen hundred by the incorporation of another town from a part of its territory, shall retain the right of sending a representative annually to the general court.

The resolution, if thus amended, will then read as follows:—

*Resolved*, That the Constitution be so amended that hereafter no town, the number of whose inhabitants shall be reduced below fifteen hundred by the incorporation of another town from a part of its territory, shall retain the right of sending a representative annually to the general court.

Mr. HALLETT. For the purpose of enabling the Convention to judge of the two modes of

reaching this object, I would amend the resolution by adding the following words :—

But the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth.

The resolution, if thus amended, would then read :—

*Resolved*, That the Constitution be so amended that, hereafter, no town shall be incorporated with less than fifteen hundred inhabitants: *provided*, that the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth.

Mr. BIRD, of Walpole. I rise to a question of order. The point of order that I make is, that the same amendment was offered by the gentleman from Fall River the other day, in the same stage of the resolution, and was rejected. The phraseology of the amendment may be somewhat different, but the object to be attained is substantially the same.

Mr. HOOPER. I deny that it is the same amendment. If the gentleman will look at it, he will see that it is different. He will see that it restricts the old town, thus left, from sending a representative annually to the general court.

Mr. ASPINWALL, of Brookline. I rise to a question of order. It is, that the subject of the amendment is entirely distinct and different from the subject of the resolution.

Mr. HOOPER. The gentleman from Brookline is surely laboring under some great mistake. If he will examine the amendment in connection with the resolution, he cannot fail to perceive its pertinency.

The PRESIDENT. Two questions of order have been raised, one by the gentleman from Walpole, that the subject of the amendment has been already acted upon, and rejected, in the same stage of the resolution. This amendment, the Chair is inclined to think, was acted upon in Committee of the Whole, and the point of order is therefore overruled.

The gentleman from Brookline raises another point of order, which is, that the amendment has no connection with the resolution now pending. The Chair is of opinion that the amendment is not in order, not being germain to the resolution.

Mr. HOOPER. I am sorry that I shall be under the necessity of taking an appeal from the decision of the Chair. Sir, this amendment simply qualifies the subject-matter of the resolution in relation to the incorporation of towns. It is merely fixing a condition in relation to these incorporations. It is certainly pertinent to the subject of the resolution, if any one thing can be pertinent to another. It certainly seems to me that it must be in order.

The PRESIDENT, after reading the resolution and amendment again, decided that the amendment was not germain to the resolution.

Mr. CROSBY, of Orleans. I would inquire of the Chair whether the immediate question before the Convention is not on the motion for indefinite postponement?

The PRESIDENT. That is the first question.

Mr. SPOONER, of Warwick. I move the previous question.

Mr. HALLETT. I understood the position of the question before the Convention was, that the gentleman from Fall River moved an amendment to the present resolution, with the view of——

Mr. LORD, of Salem. I rise to a question of order. [Laughter.]

The PRESIDENT. The gentleman from Salem will state his point of order.

Mr. LORD. I understood the gentleman from Fall River to appeal from the decision of the Chair. I understand the rule of the House to be——

Mr. HALLETT. I call the gentleman from Salem to order. [Much laughter.] The question is that he is about to anticipate the very question I was about to state to the Chair. [Roars of laughter.] The Chair ruled that the amendment of the gentleman from Fall River, to which I moved an amendment, was out of order. The gentleman from Fall River took an appeal from the decision of the Chair; and it was not until after the appeal was made, that the motion for indefinite postponement was offered.

The PRESIDENT. The question before the Convention is on the motion for the indefinite postponement of the resolution. The gentleman from Fall River moves an amendment to the resolution, which the Chair decides to be out of order. The Chair did not understand the gentleman from Fall River as having appealed from that decision. The Chair understood the gentleman to say that he would be under the necessity of doing so; but not that he actually did appeal. If he appeals, that will be the first question to be taken.

Mr. HOOPER. I did take an appeal, and I supposed that the Chair so understood me.

Now. Mr. President——

Mr. SPOONER. I rise to a question of order, [laughter,] which is, whether a motion to postpone a resolution indefinitely, permits an amendment to the resolution to be offered pending the motion to postpone?

The PRESIDENT. It is competent for any gentleman to move an amendment to an amend-

ment pending the question on the indefinite postponement. The gentlemen from Fall River will proceed.

Mr. HOOD, of Lynn. I rise to a point of order. [Great laughter.] The gentleman from Fall River took an appeal from the decision of the Chair; then the gentleman from Warwick moved the previous question. Is the appeal in order under the motion for the previous question? [Continued laughter.]

The PRESIDENT. The first question will be on the appeal.

Mr. HOOPER. I certainly, Mr. President, am sorry to be under the necessity of taking an appeal; but it seems to be so clear a case that there can be no doubt about it. The resolve is in relation to the incorporation of new towns. That is the object.

Mr. LORD, of Salem. I rise to a question of order. I believe, Sir, that there is but one gentleman in the House who does not believe that the ruling of the President is right, and that gentleman is the gentleman from Fall River himself. I submit, that under the second rule, the gentleman must find somebody to second his appeal. The second rule requires that the President shall decide all questions of order subject to an appeal, on a motion regularly seconded. Somebody must second the appeal before it is before the Convention.

Mr. CHURCHILL, of Milton. I do not know anything about the question of order, and whether it is well taken or not; but, out of courtesy to the gentleman from Fall River, I second his motion.

Mr. HOOPER. I was not aware that I was out of order, and I am told by gentlemen around me, who understand these matters better than I do, that I was clearly right. The resolution is in relation to the incorporation of new towns, and the amendment simply fixes a condition connected with such incorporations. It provides that by such incorporation no town shall retain its right of sending representatives annually, if it is reduced below a certain number. It leaves the subject of incorporation open hereafter, without restricting it, but only attaches the condition that if the town assent, as it may readily do, to part with a major part of its inhabitants, it shall not thereafter retain its right of sending annual representatives. The old town may consent to such division for the purpose of increasing the number of representatives, and this is simply a condition to prevent such incorporations for the purpose of multiplying representation. It strikes me that it simply fixes a condition to the main proposition, and therefore must be in order,

Mr. KEYES, for Abington. It seems to me that the original resolution is better than the amendments, and none at all would be better than both; therefore, I move that the subject lie upon the table, and remain there forever.

The PRESIDENT. The question before the Convention is upon the appeal of the gentleman from Fall River from the decision of the Chair.

Mr. KEYES. My motion was to lay the whole subject, appeal and all, upon the table.

The PRESIDENT. The Chair is of opinion that such a motion is not in order.

Mr. HOOPER. I withdraw my appeal, having stated my views.

Mr. KEYES. I now move to lay the whole subject upon the table.

The question was taken, and there were—ayes, 99; noes, 120.

So the Convention refused to lay the subject upon the table.

Mr. HALLETT, for Wilbraham. I now move to amend the proposition as it stands, by adding the words which I submitted at a former stage, to wit: "but the incorporation of any town shall not thereby increase the whole number of representatives in the Commonwealth."

Mr. JAMES, of South Scituate. Suppose a town of four thousand inhabitants, wants to be divided, and is divided, which of them will be entitled to the representative?

Mr. HALLETT. If I may be allowed to answer that question, the legislature will take care of that matter, and determine which shall have the representation. The only effect of the amendment is to prevent the whole number from being increased.

Mr. STETSON, of Braintree. Having introduced this resolution at first, and having been asked the other day, when the question came up for discussion, the reasons for it, I wish briefly to state the reasons which induced me to offer the proposition for the consideration of the Convention. The resolve itself, is one which affects the prospective size of the representative body. The question then for the consideration of the Convention is, whether it is expedient to check the growing tendency which exists in relation to the formation of new towns. That is a question upon which every member of this Convention is able to judge for himself. My own opinion is, that some check is necessary, and that some constitutional provision should be provided to check the growing tendency to cut up towns into two or more small corporations. My opinion is, that some check should be made, in order to save harmless those little republics, of which so much has been said, and in reference to which, I think those who wish a check upon the size of the

representative body, should have a little care for. I believe, Sir, that the largest number of the new towns, which have been incorporated for the last few years, have contained less than one thousand inhabitants; and Sir, they come in here, and claim a basis of representation upon equal grounds with towns created two hundred years ago. Now, if this work is to continue to go on, why Sir, what will be the result?

Mr. HOOD, of Lynn. I rise to a point of order. It is, that the amendment of the gentleman for Wilbraham is not in order under the thirty-fourth rule, that the amendment relates to a different matter from the subject of the resolve.

The PRESIDENT. The Chair is of opinion that the amendment is not strictly in order.

Mr. DAY, of Templeton. I move the previous question.

Mr. STETSON. I would like to raise a question of order myself. Having proceeded with the consent of the Convention, to argue the proposition before it, and having been called to order by my friend from Lynn, (Mr. Hood,) whether, by yielding the floor for a decision of the point of order, I thereby lose it, and a gentleman can take it away from me and move the previous question.

The PRESIDENT. The Chair understood the gentleman from Braintree as yielding the floor, the decision of the question of order having cut off the amendment. If, however, the gentleman claims the floor, the Chair will consider the previous question as not having been made, and the gentleman may proceed upon the question before the Convention, which is upon the indefinite postponement of the resolution.

Mr. STETSON. I trust the Convention will not postpone it. I say, Mr. President, it frequently happens, that in consequence of the location of railroads, or the establishment of manufactories in a portion of a town; in consequence of centralization, of which so much has been said, that some portion of the towns——

Mr. THOMPSON, (interrupting). I rise to a point of order. I wish to inquire what the subject-matter under consideration is? If I understand it, it is the previous question.

The PRESIDENT. The question under discussion is the motion to indefinitely postpone the resolution.

Mr. STETSON. I was saying that in consequence of centralization, in consequence of the location of railroads, and the establishment of manufactories, a new part of a town may become predominant, and outgrow the old town, and they can come before the legislature and ask for a separate town incorporation, and if they happen to be upon the right side of politics they get what they ask for. The proposition which this Convention has determined to submit to the people, holds out strong inducements to the division of towns. Take the class of towns varying from one thousand to four thousand inhabitants—being the largest fraction under this rule which the Convention has passed—and they are the greatest sufferers. Now this involves the rights of the people, and the question is: does any exigency require its submission to the people, in order to save ourselves from the evils which go to undermine town representation? I am satisfied if this Convention vote to lay this upon the table, or dispose of it as they have heretofore done; but I want them to understand the principle involved, and the fact that the rights of the middle-sized towns of about four thousand inhabitants will be the greatest sufferers under it. Sir, I trust that this Convention will adopt some principle whereby they may save themselves from the undermining and underworkings of the system which involves in itself the rights of the people, under the representative system, which is to exist hereafter, if the constitutional provision which is proposed by the Convention shall be adopted by the people. The consequence, under this system, will be that the rural part of a town will be shorn of its strength, and left to shift for itself, and probably will be barely able to exist as a town corporation. The course adopted in regard to the basis of town representation, makes the question one of great importance. But if this Convention are willing to let the matter rest where it is, I am content.

Mr. SCHOULER, of Boston. I hope the motion for indefinite postponement will prevail. My friend near me says I am on the wrong side for once, but I think I am right. I think this is a matter which can be better left to the legislature than to this Convention. Now, what is this great evil which the gentleman speaks about? During the last thirty-three years, only thirty-two towns have been incorporated; less than one every year, and I appeal to gentlemen representing those towns, whether they have experienced any evils from that.

Here are the towns which have been incorporated in the several counties within thirty-three years.

*Suffolk.*—North Chelsea and Winthrop.

*Essex.*—Georgetown, Groveland, Lawrence, Rockport, Nahant and Swampscot.

*Middlesex.*—Ashland, Lowell, Melrose, North Reading, Somerville and Winchester.

*Worcester.*—Blackstone, Clinton, Webster and West Brookfield.

*Hampshire.*—Prescott.
*Hampden.*—Chicopee and Holyoke.
*Franklin.*—Erving and Monroe.
*Berkshire.*—Monterey.
*Norfolk.*—West Roxbury.
*Plymouth.*—East Bridgewater, North Bridgewater, South Scituate, West Bridgewater, Lakeville and Marion.
*Bristol.*—Pawtucket.

Is not that a very moderate number? The exigencies of the case sometimes require that new towns should be made. We had a case before the legislature last year, for the incorporation, in Hampshire County, of a new town at Cheshire. Cheshire village was composed of parts of four towns, which all happened to center there. A large village had been built upon this junction of those towns, and a part of the village was in each of them. They could, in consequence, have no efficient police, and a person had only to cross over from one town line to another, to be out of the reach of the police. That case went through the House without any difficulty, although it is generally with the greatest difficulty that you can get an act for the incorporation of a new town, through the legislature. The case must be a strong one, before the legislature will do it. I think the whole matter should be left to the legislature to decide, when circumstances require the erection of new towns, as they have heretofore done.

Mr. HALLETT. I think this subject should not be indefinitely postponed, because it is, in my judgment, a very important question. It is one upon which may depend the continuance of town representation after the year 1860; because, if the legislature goes on to incorporate towns as fast as they will be applied for, your representative system cannot exist for ten years, without overwhelming the House with the number of members coming from these new towns.

Now the provision which has been adopted with regard to representatives—a provision which gives no new town the right of representation, unless it has at least 1,500 inhabitants—makes no express restriction to prevent both the old and new town from being represented, and the number of representatives from being increased, provided the new town has 1,500 inhabitants, and the old one 1,000. If gentlemen desire to have it understood, that within the given limits of a large town, you may multiply the number of representatives as many times as you can divide the number of inhabitants by 1,500, and leave 1,000 in the old town; if they mean to do that, then why not take the ratio of 1,500 alone, and stand by it? I should prefer that to adopting 4,000 as the increasing number, and then leaving a loop-hole whereby the legislature can divide any town having more than 1,500 inhabitants, and give to each town a representative. I do not believe the Convention mean to do any such thing; and yet the legislature may put that construction on the making of new towns. Now, Sir, I desire that some such amendment as that proposed by the gentleman from Fall River, (Mr. Hooper,) shall be adopted. I hope some provision will be made, in this stage or another, if not now in order, by which, when a new town is incorporated, with a sufficient number of inhabitants to give it a representative, the number of representatives for the two towns shall not be increased, if our Constitution provides that no new town shall be incorporated with the privilege of representation containing a less number of inhabitants than 1,500, but makes no provision against increasing the number of representatives where the number of inhabitants equal 1,500. The effect, therefore, may be, to increase the number of members in the House of Representatives, in a few years, to an inconveniently great extent. I hope the subject will not be postponed; and, if it is not, I have an amendment which I am sure will be in order, and which will obviate the difficulty.

Mr. SCHOULER, of Boston. Will the gentleman allow me to ask him a question? Within the last twenty years the town of Lowell has been set off from the town of Chelmsford; now I want to ask him which is entitled to be represented, Chelmsford or Lowell? Of course Lowell will be represented, and yet Chelmsford will be left with only population sufficient to entitle her to one representative, or a half of one. Now, I do not think it is justice to the old town, to deprive her of her representative by cutting out a new one within her limits.

The same is true with regard to Lawrence. I want to know if there is to be no representative in the town from which Lawrence was taken, for all time to come? I want to know, when we come to have the new town or city of Holyoke, if the town from which it is taken is to be deprived of its representation?

Mr. HALLETT. The gentleman asks the question, suppose Lowell, with a population of 10,000, is taken from Chelmsford, leaving Chelmsford with a population of only 1,000, whether we are to deprive Chelmsford of her representative? Certainly not. I would give Chelmsford with its 1,000 population, a representative; but I would provide that the whole population of 11,000, which was originally within the limits of one town, should be entitled to no greater number

of representatives when in two separate towns, than it was when in one and the same town. That is my proposition. The object is to give a reasonable limit to the increase of new towns, so as to prevent their being divided for the purpose of giving additional representatives. If the legislature go on incorporating new towns, at the rate it has done, for the last five or six years, and representatives are given to each of these new towns, you will soon have a House so large that you will be compelled to abandon town representation entirely, and adopt a district system. I hope this subject will not be postponed, but that we shall adopt some amendment to remedy the difficulty, and then incorporate the resolve into the Constitution.

Mr. UPTON, of Boston. I hope the motion, indefinitely to postpone, will not prevail. I think an amendment may be framed which will be in order, and which will have the effect of remedying the evil. It is a subject of considerable importance, and one which I hope we shall make provision for. By the provisions you have adopted, you apportion your representatives under the census of 1850, and that apportionment holds until a new census is taken. Now, the question before the Convention, as I understand it, is this: Do you mean to have this matter open, so that towns can be divided and entitled to an increased number of representatives without increasing their population? I say you ought not thus to have it, and I hope you will not. I agree substantially, with the position taken by the gentleman for Wilbraham, (Mr. Hallett). I had drawn up an amendment, which I think will meet the case, and which, at a proper time, I propose to offer. It is the following:—

That the Constitution be so amended, that hereafter no town shall be incorporated by which the representation on the present, or any future basis, shall be increased in consequence of the division of any of the existing towns.

That is the principle which I wish to adopt. I hold that to be a sound principle, and a principle which gentlemen from the rural towns in this Commonwealth ought to follow.

Mr. SARGENT, of Cambridge. I think, Mr. President, that the debates which we have had upon this question, furnish a most beautiful commentary upon the system of representation we have adopted. The injustice and inequalities of that system, seem to haunt the minds of gentlemen at every step they take.

The gentleman for Wilbraham, (Mr. Hallett,) fears that in consequence of the incorporation of new towns, the House will become so large as to render the system obnoxious, and in a few years to overthrow it. To obviate this difficulty, he proposes to ingraft into the Constitution a provision, that the number of representatives shall not be increased by incorporating new towns. Well, Sir, let us look at it for a moment, and see how it will stand, if we adopt the amendment which he proposes. We have provided first, that every town in the Commonwealth now incorporated having 1,000 inhabitants, shall be entitled to one representative. We have provided farther, that no town shall be hereafter incorporated, with the right of annual representation, containing a population of less than 1,500 inhabitants. That is, if they have 1,500 inhabitants, they shall have an annual representative. Well, Sir, you make the census of 1850, your basis to start with. But, when you come to 1860, what are you to do? You take your towns, whether they already are incorporated, or whether they shall be incorporated between now and 1860, and apportion their representatives according to the plan you have already adopted. Well, Sir, there is no difficulty in this; it is all very plain and easily understood. But, Sir, what does the the gentleman for Wilbraham, (Mr. Hallett,) propose to do? Here is your plan which you have already adopted, providing that at every decennial period you shall so apportion your representatives that each town now incorporated having 1,000 inhabitants shall have one representative annually, and that each town hereafter incorporated having not less than 1,500 inhabitants, shall have an annual representative also; and yet, with these provisions standing in your Constitution, the gentleman for Wilbraham proposes to adopt another proposition directly in conflict with this, providing that the number of representatives shall not be increased by the incorporation of new towns. Now, Sir, let us look at the practical result of this system thus complicated. Suppose you have a town with 2,600 inhabitants, which should be so divided, that the original town shall contain 1,050 inhabitants, and the new town 1,550. When the next decennial period arrives, how are you to apportion your representatives. You have one constitutional provision, which declares, that each of these towns are entitled to an annual representative; and yet you will have another provision declaring that those two towns shall have but one between them.

Now, Sir, which of these two provisions shall rule, and how shall that question be decided? This is the position in which we shall be placed if we adopt the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett). And, Sir, this shows the difficulty into which we are led,

step by step, when we attempt to remedy one evil, or one wrong principle by establishing another wrong principle. Sir, I think we had better pause, and not plunge ourselves into greater difficulties by attempting to convert two wrongs into one right. Sir, every step we take in that direction plunges us into greater difficulties. I hope, therefore, that the subject will be indefinitely postponed.

Mr. ELY, of Westfield. I move the previous question.

Mr. HALLETT. If the gentleman will allow me to make just a single explanation in reply to the gentleman from Cambridge, (Mr. Sargent,) I will then renew his motion.

Mr. ELY. With that understanding, I will withdraw the motion.

Mr. HALLETT. The gentleman from Cambridge, goes on as if each town had an absolute right of division with the privilege of representation, without reference to any other power. Now, Sir, this matter must all go before the legislature. If a town with 2,000 inhabitants, asks to be divided, and the legislature make the division, they will make it with certain restrictions which shall guard the right of representation. The legislature will take care of that; and, after all, there will be no very great difficulties to encounter. All they have to do is, that when a new town is to be incorporated under these circumstances, to provide, as a condition upon which it shall be incorporated, that the representation of the two towns shall not be increased thereby. It seems to me very necessary, that we should make some provision to prevent multiplying the representatives of these small towns, if we mean to stand by the basis which we have adopted. I hope, therefore, that the resolve will be properly amended, and then passed. I now renew the motion for the previous question.

The previous question was seconded, and the main question ordered.

Mr. HOOPER, of Fall River. I desire to inquire if the main question is not upon the motion indefinitely to postpone?

The PRESIDENT. The previous question cuts off the motion to postpone; and the question, therefore, now is, upon ordering the resolve to a second reading.

The question was taken, and the Convention refused to order the resolve to a second reading.

*Harvard College.*

The next business in the Orders of the Day was the consideration of the resolves upon the subject of Harvard College, the question being upon its final passage.

Mr. KNOWLTON moved that the subject be passed over in the Orders of the Day.

The motion was not agreed to.

The resolve was then read by the Secretary.

On motion of Mr. BOUTWELL, for Berlin, the yeas and nays were ordered upon its final passage.

Mr. WILSON, of Natick. Mr. President: Having, for some years, taken a deep interest in the discussions growing out of the questions that have arisen concerning Harvard University; having introduced, early in the session of the Convention, a proposition to authorize the legislature, in joint ballot, to choose the corporators of the University for the term of seven years, I had intended to address the Convention at some length upon the resolution now pending. I have prepared, with considerable care and labor, an argument to sustain the position that the college was founded by the Commonwealth, and that the Commonwealth has the right to change the mode of choosing the board of corporators, and that the interest of the university would be promoted by so doing. I hold in my hand more than fifty closely written pages of quotations from the records of the State, from the best authorities I could find, to show the connection of the State with the college, and the powers exercised over its government, through a long series of years.

Sir, had this resolution come up for consideration earlier in this session, I should have claimed the indulgence and attention of the Convention upon this great question—a question upon which the people of this Commonwealth take the deepest interest. But at this time, when we are pressed for time; when we have limited each speaker to half an hour; when all of us are exhausted and weary, I shall forego what I had intended to say upon the merits of the pending resolution. The chairman of the Committee, (Mr. Knowlton,) in his very able speech, has placed the question upon the basis on which we are content to rest it.

I desire, Sir, to say a few words in reply to the remarks made the other day by the member from Danvers (Mr. Braman). I regret that he is not now in his seat. I have not a word to say in reply to the personal allusion made by the member from Danvers. I fully concur in the remark made by Governor Leonard, one of the foremost statesmen of the republic, on the floor of the American Senate, that no man was personally of consequence enough to occupy the time of the body of which he was a member, one minute, by explanations of a personal character. But the member from Danvers came to the defence of Mr. Francis Bowen, who was rejected

in 1851, by the board of overseers, of which many of us on the floor of this Convention were members. I am ready, here or elsewhere, at all times to defend that glorious act, which put the hand of condemnation upon the libeller of the advocates of popular rights in the old world and in the new. I am ready to defend that act, whether it be assailed by the polished rhethoric of the gentleman from Boston, (Mr. Hillard,) or the coarse wit of the member from Danvers, (Mr. Braman).

I propose, Sir, to prove the truth of the declaration made the other day, in reply to the charge of the gentleman from Boston, (Mr. Hillard,) that Francis Bowen was rejected, in 1851, not alone for his sentiments and opinions, but for ignorance of the historical questions discussed, and for misquoting, misstating, and garbling historical authorities.

Mr. PARKER, of Cambridge. I rise to a question of order. It is the prevailing fashion, I believe, to make points of order. The question which I wish to suggest is, whether it is in order for the gentleman from Natick to try the case of the Professor of History over again. That subject, Sir, was drawn into the debate here, I mean the subject of the rejection of the Professor of History. I believe, in the first place, there were some remarks made by the gentleman from Boston, to which the gentleman from Natick, and the gentleman for Abington, made their replies at the time. I had hoped that that subject—a subject foreign entirely to any business before the Convention—might, at least, have been suffered to rest there; but the gentleman from Danvers, some days since, saw fit to allude to the matter again, and the gentleman from Natick replied to him without any objection being made. Having been up twice before the Convention, it seems to me the gentleman who was nominated as Professor of History and rejected, should be allowed to sleep in peace, and not have his case farther discussed before this Convention. It seems to me that the time of the Convention is quite too precious to be wasted in taking up that subject again for farther discussion. There is no gentleman I would listen to with more pleasure than I would to the gentleman from Natick. I do not make an objection because he proposes to discuss the matter, but because it seems to me that it is hardly just towards the gentleman who has been the subject of so much remark, that he should be drawn in here for the third time, without his agency, and without his consent.

The PRESIDENT. The Chair cannot undertake, at this stage of the gentleman's remarks, to say that he is out of order.

Mr. WILSON, of Natick. Mr. President: I am quite sure it would be in order for me to discuss the subject, in order to show that the Convention should adopt the resolution now pending —that the action of the corporation of the college in nominating Francis Bowen to a Professorship after his rejection from the Professorship of History, for his opinions, which unfitted him to be the teacher of American young men, and for his ignorance, exhibited in the discussions of historical questions; demand that a change should be made in the organization of that board of corporators—a change that shall compel the corporators to put that institution along abreast of the spirit of the age. The action of the corporation of the university in sustaining Francis Bowen, is one of the strongest reasons for the action of the Convention; and it is in order to show what that action was, and to explain and defend the motives and action of the overseers of the institution in 1851.

The PRESIDENT. The gentleman from Natick will proceed.

Mr. WILSON. I have no wish, Mr. President, to take up the time of the Convention with the discussion of this subject. I will forego what I was prepared to say, and at some future time I may publish so much of it as I deem necessary to vindicate the action of the overseers of 1851.

Mr. LOTHROP, of Boston. I move to strike out the words "hereafter granted," in the last line of the resolve.

The resolve as amended, would then read:—

*Resolved*, That the Constitution ought to be amended by adding to chapter 5, section 1, the following article, to wit:—

The legislature shall forever have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to, or alter, limit, annul, or restrain, any of the powers now vested in the President and Fellows of Harvard College: *provided*, the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises for the purposes of education in this Commonwealth.

Mr. LOTHROP. I have no very strong objection to the resolution as it stands at present. I think, however, it will be improved by the amendment I have proposed, because that amendment would make it more general and comprehensive. When this resolution was before us a few days ago, I proposed to amend by including the other colleges of the Commonwealth. That amendment was ruled out of order. It was also said by the chairman of this Committee, that that amendment was unnecessary, because the language of this resolution was already incorporated into the charters of the other two colleges. That

may be, Sir, but we have many other institutions for educational purposes in this Commonwealth, besides those two colleges. We have a great many academies, and some of their charters run far back, some of them dating even at an earlier period than the charters of these colleges. Several of these academies, also, have now a considerable amount of funds at their disposal. Others of them, as has been the case with that at Groton, for instance, may have their funds greatly increased hereafter by rich merchants, who were once pupils of these academies, and natives of the towns where they are located. They may become very important and influential institutions of learning, hold a large amount of funds, and still keeping their charters as academies, may become as worthy of the care and oversight of the Commonwealth, and may demand that care and oversight as much as Harvard University or any of the colleges of the State; and unless gentlemen can say that the provision contained in the first part of this resolution is expressly declared in the charters upon academies, my amendment ought to prevail. If I understand the distinguished gentleman for Berlin, (Mr. Boutwell,) this resolution simply declares expressly and unequivocally in its application to Harvard College, a general principle which, in point of fact, is applicable to every institution created by the State; and if he deems it necessary to make the distinct avowal of this principle in regard to Harvard College, then I think he must admit and maintain—or if he does not, I do maintain—that it is important that the Constitution should not leave it equivocal or doubtful, whether this principle does apply to these academies, or all institutions of learning in the Commonwealth. The Constitution ought not to leave that point equivocal or doubtful. The main reason given by the chairman of this Committee, the other day, for the adoption of the resolution as reported, was that there might be no doubt upon the subject. He contended that the Constitution now virtually gives to the legislature the power which is here given; but there might be some doubt about it, and in order to remove that doubt and make the matter distinct and clear, this resolution was introduced. I say it is equally desirable that there should not be any doubt, whether the legislature has like power over all the institutions incorporated in this Commonwealth for educational purposes. If you retain the words, at the close of this resolution, "hereafter granted," you do leave that matter doubtful; or rather you remove all doubt, and virtually say, that all other institutions for educational purposes, now incorporated, would not come in under the resolution, because the phrase, "hereafter granted," implies that those already granted, are not included. The principal reason which makes it necessary to pass the first part of the resolution, in relation to Harvard College, makes it equally necessary, and equally important, that you pass the same resolution in regard to all institutions incorporated for educational purposes in the Commonwealth. It is desirable that the academies of the Commonwealth, some of which may become very important institutions hereafter, hold a large amount of funds and exercise a wide influence, should be included under the same general rule, which is here expressly applied to Harvard College, which by their charters is applied to the other colleges, and which by the terms of the resolution is to be henceforth applied to all "corporate franchises henceforth granted" for educational purposes. Unless there is in the resolution something specific and peculiar aimed exclusively at Harvard College, there can be no objection to my amendment, and every reason that can be given for the adoption of the resolution at all, applies with equal force to the adoption of the amendment.

I have said that I had no very strong objection to the resolution reported by the Committee. I should have been glad if the Committee had reported something a little more distinct, definite, and full, in relation to this subject. There were various orders submitted to that Committee for their consideration, emanating from opposite sources, and opposite in their character. I was in hopes that the Committee would, in their Report, refer to those orders, and that they would indicate pretty distinctly what they thought were, or ought to be, the relations subsisting between the Commonwealth and the university at Cambridge, and what line of policy it would be wise to pursue in relation to the college. I do not know whether the Committee intend to report farther in relation to these orders, or not. As this resolution has been explained by the gentlemen, I have no particular objection to it. If it is intended, as they say it is, simply to give the State of Massachusetts all the right, power, and control over the college which it can have, except the power to violate its own faith, break and invalidate its own contracts, and if that is all which the resolution is intended to convey, of course there can be no objection to it. No one will deny that the State has, and ought to have, that power. But, if it is intended to convey anything more; if there is anything concealed; if the provision alluded to, "provided the obligation of contracts shall not be impaired," does not cover the charter of the college, if it is intended that the legislature shall have power to take possession of this whole in-

stitution and all its funds, and bring it into the arena of politics and State legislation every year, then I object to the resolution as wrong in itself, extremely inexpedient and impolitic; prejudicial in every point of view to the interests of the college, and to that great object, the advancement of learning and education, which the college is instituted to promote. After the debate upon this subject the other day—if I may be permitted to allude to something which was said out of debate—my distinguished friend representing Berlin (Mr. Boutwell) said to me that I was afraid some harm would be done the college, that I was afraid to trust it with the State, &c. Sir, in one sense, I am not afraid of anything in this world. I believe in God, in his overruling providence, and I believe that progress is the law of that providence. But I do not believe that government has much to do with human progress, and I do not believe in the power of government to do much good in the world. I think that every gentleman must be satisfied, from the discussions which we have had here this very day, from the discussion of the last three months in this hall, that government is nothing but a necessary evil, a nuisance that cannot be abated from civil society. It has never done much, and cannot do much, to carry the world forward. It is the ship, the mariner's compass, the cotton-gin, the spinning-jenny, the printing-press, the steam-engine, the railroad, the telegraph, and all the other discoveries and inventions that result from human thought, and give impulse to individual action, which have carried the world forward. Government has never done much positive good for the world. It can only prevent some evils, and that is the best you can say of it. The very discussion we have had here this morning, helps to confirm what all human history teaches, that in regard to government there is a continual struggle of conflicting opinions going on. Nothing is settled or determined; all legislation is, to this hour, an experiment; and taking this assembly as a type, I may say that even in this country, at this moment, not a single important principle entering into the organization and structure of civil government can be considered as fixed and established by the consenting wisdom of the people, not one that men are not discussing, and attempting, in some way, to change, modify, or overturn and destroy; and I have not much respect, therefore, for government. I am very glad that with us it is so good as it is; and I submit to it and honor it for what it is worth; but I do not attach much importance to it as an instrument of social progress. I think the great reason why we have made so much progress in this country, is not because of any direct and positive power of the government, but because of the extent to which our government lets the people alone, and leaves institutions alone to individual energy, enterprise, thought, and action. Has the government of Massachusetts raised up Harvard College to be the noble institution it is? By no means. The government permitted it to exist, and individual benefactions, individual enterprise, effort, and wisdom, have made it what it is. Taking into consideration the little government has done for this institution during the more than two hundred years which have elapsed since its foundation, and remembering that of that little, by far the greater part were appropriations to meet its annual expenses, so that the State, and the living generations of youth educated at the college, had then the benefit, and the whole benefit of these appropriations; and remembering, also, that this was done long years ago, at a time when nineteen-twentieths of the people of the Commonwealth were of the same religious denomination; remembering these things—which cannot be denied—I say, that if this resolution is intended to give the legislature power henceforth, to take that institution under its entire and absolute control, and bring the election of its president and fellows, and the direct management of its affairs into the arena of politics and legislation; and, to do this now, at a time when the State is divided into all manner of religious denominations, each of which, if you make it a State institution, may claim a right to be represented on its boards of government, and to have its opinions consulted in the course of studies and text-books appointed; and to do this now, when the institution itself has grown, from a small academy, to be the noblest seminary of learning on this Western Hemisphere, with large means and instrumentalities of education, nearly the whole of which must be acknowledged to come, not from State endowments, but from the donations and bequests of private individuals; if the resolution contemplates giving the legislature power, and an invitation to do this, then I say that I am opposed to it, both as a matter of right and of expediency. I do not believe it would be just for the State to do this. I am sure it would be most injurious to the interests of the college, and to the great good the college can do the State and the country. A State cannot manage a higher seminary of learning, and make it useful and progressive, so easily or so well as a corporation of private individuals; and, admitting that the corporation of Harvard College have not been perfectly wise, free from all the errors incident to humanity, I yet maintain that neither the

State nor any political or religious party in the State, could have managed the college more successfully, or conducted it upon broader, more generous, catholic principles. In this respect it may challenge comparison with any other college in the land. Gentlemen say they desire to make the institution more popular, to infuse a more popular spirit into it, and bring it more into sympathy with the people. Sir, in this desire, I go with gentlemen with my whole heart, so far as it can be done by any wise and legitimate means. I do not concur with gentlemen in the alleged necessity of any extraordinary efforts in this direction. If you look at the history of the college, its present condition and its continually increasing adaptation to the growing intellectual wants of the age, I do not see how gentlemen can stand up here and say that it is not in harmony with the people; that is, with their interests and wants, in regard to education. If a tree is known by its fruits, then I maintain that Harvard College has always been in sympathy with the people, and that, at all periods of her history, the leading popular men of the day have come forth from that college. This fact will be apparent to all who look over the catalogue of the names of the graduates of that institution, from the earliest period down through the days of the Revolution, to our own times. This fact is especially seen, by looking around upon our own community in Massachusetts. I maintain that many of the leaders in every popular movement, made among us at the present day, are sons of Harvard. Phillips, Quincy, Rantoul, Dana, Sumner, Adams, Cushing, Bancroft—are not these the names of men prominent in matters of moral, social, or democratic reform? are they not sons of Harvard? They were educated at that institution; their characters were there subjected to many forming influences, and whatever their present power—intellectual and moral—they owe as much, if not more of it, to Harvard College, than to anything else. Take the whole history of that institution, from its origin down to the present day. I believe it will be found, that the most leading and popular men of Massachusetts; those, in every generation, who have been the most earnest advocates of reform and progress, have been sons of Harvard College. I maintain, and the position is amply sustained by the facts of the case, that the influence always exerted upon the minds of young men at that institution, has been a good influence, an influence favorable to social progress. It has not been a narrowing, bigoted, sectarian spirit which has prevailed there, but a large, generous and progressive spirit; and we have a right to maintain, that that college has, in an eminent degree, contributed to the spirit of popular progress. Upon the principle that a tree is to be judged by its fruit, and looking at the character of those whom Harvard College has sent out into the world, I maintain that the college has never been behind the age, or wanting in sympathy towards the best interests of the people. The same position is true, if we look at the college itself, and the provision made to meet the educational wants of the people. I ask if there is any kind of learning, education, or preparation for life, which the people of this country desire for their children, that is not provided for them at that institution? Has not that college continually made progress in all directions, through the efforts of its friends, and the enterprise of those who have had charge of it? Look at its academical department now, and see what progress has been made there, in enlarging and perfecting its course of study. Look at its law school, with the best law library to be found upon this continent, if, indeed, there is a better in any place in the world. Look at its medical department, and its scientific school, founded by a munificent donation of $50,000, from a distinguished merchant of this city, one of those rich men, of whom, as the gentleman said, we might kindly lay a thousand of them under the sods of Mount Auburn and not miss them. Look at the arrangements of that scientific school, and the facilities which it affords for thoroughly educating men for all the practical purposes of life. Look at its divinity school, and the principle upon which that school is founded; and I ask if it would be possible for the State to take control of it, and make a broader, better, more catholic and Christian foundation than the one upon which that school now rests? No man going there to acquire theological education, is called upon to subscribe to any articles of faith, or the doctrines of any particular denomination; nor is such subscription required of any professor; but every one connected with that school is at liberty to study the Divine Oracles, and interpret them according to the dictates of his own conscience, and gather from them what he deems to be their true meaning, and go forth into the world to connect himself with whatever religious denomination he chooses.

I say, look at the college in all these departments, and see if it has not constantly endeavored to come up to the wants of the people of this Commonwealth by presenting the means and opportunities for the best education that could be procured in the country. Has there ever been, on the part of those who have had charge of this institution, any action, which, fairly construed,

could be regarded as an expression, or evidence, of their want of sympathy with the people? or has there ever been, as regards education, any want expressed, or manifested, by the people, which they have not endeavored to meet? I do not think, therefore, that we have a right to say that the college has no sympathy with the people, or with popular wants and interests, merely because the corporation of the college is a close corporation, as it is termed, and its members, in filling vacancies, have chosen men with whose characters and principles they were well acquainted, and who, they believed, would sympathize and unite with them in administering the college upon broad, catholic, unsectarian principles. The college was not established that the offices in its corporation might be for the benefit of those who hold them, —a benefit in which the whole community might have a right and claim to share. The offices in its corporation exist, that the college may be well administered; that it may be carried forward, as a seminary of education, in all the great departments of learning. And the only question of any practical importance, is not, whether this or that man, of this or that political or religious party, has been chosen a member of the corporation, but, has the college been well administered; has it grown in means and instrumentalities of education, and in adaptation to the wants and progress of the age? And this question, I maintain, must be answered in the affirmative. No other institution of learning in the country has made greater, if any have made as great, progress during the last half century, as Harvard College. The offices in its corporation are offices of labor and responsibility, and they have been well filled, hitherto, throughout the whole history of the college, by men who had no object but to promote the best interest of this community by promoting the advancement of that institution. If we review the history of the college, therefore, if we review the catalogue of its graduates, and consider the present condition of the college, and all its instrumentalities for the promotion of learning, we shall find that all who have had the control of it have endeavored, according to their best judgment and ability, to bring it into sympathy with the wants and interests of the people, and make it promote their welfare and interest by the advancement and diffusion of sound learning.

As this question about the organization of the college is one of some interest, I may be permitted to say, that if I was supreme in this matter, and could take the colleges of the Commonwealth, and organize them according to my own judgment, I would adopt a plan which I propose to state, and I was in hopes that the various orders submitted to the Committee, would induce them to take the matter into consideration, and, perhaps, present something of the same sort. I would have a board of trustees for each of the other colleges, precisely similar to the corporation of Harvard College, perhaps a little larger, but still small; and a self-renewing board, which should originate all measures, have all the responsibility, and the controlling power over the institution. I believe that in all matters a small body acts better than a large one, and that a small body, having charge of a college, will be more faithful in carrying forward measures for the benefit of the college and increasing its value to the people of the State, than a large body, where the responsibility is greatly divided, consequently diminished. I would have such a board for each of these colleges, and then I would have a large board of overseers, like the overseers of Harvard College, consisting of fifty for each college; and these overseers should be chosen by the alumni of each college, in convention assembled, holding office for a limited term, or as long as they chose to serve, and I would include in the alumni all who had received honorary degrees in the college.

This suggests to me another point to which I intended to refer, while speaking of the sympathy of the college with the people. If you will look through the list of the honorary degrees it has conferred, you will find that whenever there has been a man who has distinguished himself in any department, but who had not the advantages of a collegiate education, was not a son of Harvard or any other college, the college at Cambridge has been among the first to recognize the merits of such a self-made man, and give him an honorary degree; showing, thereby, that the persons who had charge of the college felt some sympathy for the people, and with every manifestation of excellence, superiority, and progress, among them.

I would organize these institutions in the way I have suggested, because nothing is so important for any of these colleges, as to increase alike the interest and influence of the alumni of each college, in its prosperity and welfare. A board of overseers for each college, chosen by the graduates, from their own number, of that college in convention assembled, would effectually produce this increased interest and influence. I regret that no distinct plan, no outlines of policy, nothing indicating the precise relations of the college to the State has been reported by the Committee; nothing but a single resolution, which decides nothing, and leaves it doubtful what those who like to speak of the college as a State institution, a government institution, propose to do.

There are one or two positions, which I wish, before I sit down, to state; propositions which gentlemen acquainted with the history of the college, will acknowledge, and which, fairly stated and considered, ought to influence the future action of the State, in relation to the college. The distinguished gentleman for Berlin, (Mr. Boutwell,) has several times spoken of this as a State institution. I believe that in the debate the other day, on a resolution which came from the Committee on Education—I was not present at that time, but I see him reported as using the words "government institution." If it is intended by this resolution, or if it is intended by that gentleman in his remarks, to claim that there is a special relation between Harvard College and the State, which authorizes such expressions, I should take issue with him on that point. The military academy, at West Point, is a government institution; the reform school, at Westborough, is a government institution; the State's prison is a government institution, a State institution. In regard to the reform school at Westborough, the State appoints all the officers, owns all the property, controls and manages the whole thing, in any way, at any point. It is, therefore, a State institution. But, a college, a bank, a railroad, though the State may give funds to it, though the State may be interested in it, though the State may have created it by a charter, it is still not a State institution, but an institution of the State, and is within the control and management of its properly constituted authorities. Now, my first proposition in regard to Harvard College, is this: If we go back to the early history of this college, during the time of the colonial government, I think you will find that the institution made very little progress so long as there was constant interference on the part of the State, with its affairs and interests. The college never began to grow and prosper, and take steps towards the great institution that it now is, so long as the colonial government was constantly interfering with it. It was only after it had worked itself free, to stand on its own foundation, that it began to rise and flourish. The interference of the State affected it in various ways; but more particularly, in regard to the important matter of the presidency of the college. You will find, on looking at its history and reading the record of the board of overseers, that it was almost impossible to get the best men in the State to take the office of president. There were innumerable cases in which gentlemen, who were consulted whether they would take that office, declined, because then the salary was precarious, dependent upon an appropriation from the colonial legislature. In other cases, gentlemen who were elected, and had agreed to accept it, had to decline, because the legislature would make no appropriation. My second proposition is, that all, or very nearly all, the funds which the college has ever received from the State, were received as appropriations to meet contingent expenses, to pay the salary of the president and other officers, or defray the expenses of indigent students. These appropriations were all expended during the year when they were made; and the community, the young men of that time, the generations growing up then, had the return for these appropriations to the college, in the education which they received. There is not in a single endowment——

[Here the time allowed under the rule, expired, and the hammer fell.]

Mr. HALLETT, for Wilbraham. I have listened with a great deal of interest, to the remarks of the gentleman from Boston. He made an appeal in this wise: whether Harvard College had ever failed to conform to the wishes of the people in its action. I would not have replied to anything else which the gentleman said, but I do feel it to be my bounden duty to mention one single act in the history of Harvard College, with which I was personally connected, relating to her respect for the laws of this Commonwealth. In 1828 an act was passed by the legislature of Massachusetts, requiring that Harvard College, thereafter, in the filling up of the clerical portion of the board of overseers, should have no respect to denominations. That order or resolve was passed by the legislature of Massachusetts, requiring the concurrence of the board of fellows of the college—five gentlemen—before it could become a by-law of the college. It slept on the statute book from 1828 to 1843; and during the whole of that period, no person was elected to the clerical board of the college, that was not of one particular denomination.

In 1843 a political change took place in the administration of the government of the Commonwealth of Massachusetts, for the first time since 1824. Although there was a majority of the Senate one way, yet with the minority and the Council, there was a majority of the board of Harvard College, of different political sentiments from those who had remained there since 1824.

A MEMBER. Of different religion?

Mr. HALLETT. No, Sir, there was no religion about it; it was all politics. It was then proposed in the board of overseers, that the fellows should adopt a rule, which we reënacted, that the vacancies, which then amounted to four,

in the board, should be filled without regard to denomination. That order passed the board, and was sent down to the fellows for their concurrence, and it remained there one fortnight. The majority of the board took the determination—and I know very well they would have adhered to it as long as they had any vitality, officially—that no nomination coming from Harvard College should be confirmed until the board of fellows did adopt that order. For one meeting, it passed over; but when the fellows found there was a determined resolution to carry out the will of the board of overseers, they accepted the order, and they went on and did the wonderful thing of electing four clerical gentlemen, taking one from the Orthodox church, one from the Baptist, one from the Universalist, even, and one from the Episcopalian. Those were the four denominations. It was then most alarming and terrifying to a very reverend gentleman of the liberal order of Christians, and he expressed himself with a great feeling of awe and indignation towards some of us, that we were most irreverently laying our hands on Harvard College, to destroy the intention of the original founders of that institution. And thereupon, being brought up as I was, an old-fashioned Baptist—I regret to say that I have not honored the profession as I ought to have done—I said to that gentleman, "Who has perverted the original foundation of Harvard College, if that be the question? What would Harvard, and Ellis, and the rest of them say, to hear the doctrines preached which you preach in your pulpits?" Those doctrines were denounced by the early founders of the college as litt'e better than heresy. We restore to the college, at least, religious liberty, whatever else may be its fate. That was the first time when Harvard College was opened to religious freedom; for she had been excluded from religious freedom in the hands of the liberal Christians! Sir, I am no bigot, on any point; I am as universal a man, as regards religious profession, as can be found anywhere. But that showed to me, what all history shows, that you cannot trust anything connected with religious freedom, in the hands of one denomination. I would not have trusted the Orthodox, any more than the liberal Christians. For I remember—and this is an illustration of that idea—that there was one Orthodox clergyman in that board. How he got there, I do not know; but he happened to be there, in solitary grandeur, and when we proposed to him that we were going to open Harvard College to all denominations of Christians, he was most delighted, and clapped his hands with joy, and said, "I go with you." But when we went farther, and proposed to introduce the Rev. Mr. Ballou, a Universalist clergyman, this reverend gentleman was horrified at the idea of opening it to every-body, and protested against it.

The conclusion of the whole matter is—and I appeal to the liberality of the last gentleman who spoke, and a more liberal and enlightened gentleman I do not know, and there is none for whom I entertain a higher respect, for I would trust him sooner than any denomination, or his own denomination—whether the supervision of the legislature has not had a pure, wholesome, beneficial influence, over this institution, in which we all take pride. That is just what you want, and nothing more: and whenever the influence of sects come in to disturb, your legislature here, and your people behind them, are the best possible source to go to, to correct these evils. I think, therefore, this resolve should pass, precisely as it is; and that it should pass with the most cordial understanding between us, and the people when they adopt it, and Harvard College, which I trust we shall guard as the apple of our eye, and as the fountain from whence are to flow streams of purity and intelligence, to elevate and purify the land.

Mr. WILSON, of Natick. Mr. President: My friend from Boston, (Mr. Lothrop,) has opened a subject, upon which I have a few words to say. He has spoken with all the ardor and generosity of his nature, of the liberality of Harvard College, and of the men who direct and control it.

Mr. LOTHROP. If the gentleman will allow me, I will tell him what I said. I referred to the efforts of these men to keep the college along with the wants of the people.

Mr. WILSON. The gentleman, as he states, spoke of the efforts of these men to keep the college along with the wants of the people. But he held out the idea, also, that in its management, it was guided by men of liberal opinions, who kept it abreast of the spirit of the age—along with the sentiments and opinions of the people. Upon this theme, the gentleman descanted with all the ardor of sincere conviction. Now, Sir, I have a word to say upon this topic, thus introduced by my friend from Boston.

In looking over the catalogue of Harvard College, I am not able to find a single name of a corporator, for more than half a century, which is not associated with one sect in religion, and with one party in politics. I may be mistaken; but out of the last thirty-three corporators, who have been appointed during the present century, I do not see a name that is not connected with the Unitarian sect, in religion, and the Federal and Whig parties, in politics. I must say, Sir,

that it seems to me exceedingly strange, that the corporators of that institution—an institution founded by the Commonwealth—incorporated into the Constitution with the injunction that the government should foster and cherish it—should so manage it, that one religous sect, and one political organization, should alone be represented in that corporation. The corporators have the control of the university—they fill all vacancies in their number, that happen by death or otherwise. For fifty years, in spite of the remonstrances of all other religious sects, and of all other political organizations, they have continued to fill up the board of corporators with men of their own creed and political faith. I put it to the gentleman from Boston—I put it to the members of the Convention to say, if this is an evidence of liberality—an evidence of keeping along with the sentiments, and opinions of the people?

Farthermore, during a long series of years, the permanent overseers of the institution have nearly all been of one political faith, of one religious creed. In 1851, the legislature, under the lead of a distinguished gentleman, (General Cushing,) passed an act reorganizing the board of overseers.

At that time, there were thirty-one permanent overseers, of whom, twenty-seven were of one political party, and twenty-five, of one religious sect. By the provisions of the act of 1851, it was made the duty of the legislature, in joint ballot, to choose the overseers, and by the legislature of 1852, ten were accordingly chosen. The men who, for years, had complained of the exclusiveness of the corporators and overseers of the university, having then the power, determined to act up to their professions, and to set an example, which they hoped future legislatures would imitate. A meeting was called in the Senate-Chamber of Whigs, Democrats, and Free Democrats. Over that caucus of the members of three parties, I had the honor to preside; and I can bear witness to the desire expressed on all sides, to select men of learning and ability, without regard to parties, or sects. The delegate from Boston, (Mr. Gray,) a devoted friend of the university, was present, and he can tell you, Sir, that the meeting was unanimous in the sentiment, that men of learning and talent, of all sects and parties, should be selected. Ten gentlemen were nominated, three Whigs, three Free Democrats, and four Democrats, and the various religious denominations were represented; the Unitarians having three, although they had thirty-one, out of the existing thirty-seven corporators and overseers. The two branches of the legislature, went into convention, and the persons nominated, were elected without any opposition whatever. The men who had for years, justly complained of the policy by which nearly all the religious denominations were kept out of the corporation and board of overseers, thus set to future legislatures a glorious example of liberality, which, if followed, will cause all parties and sects to be represented in the board of overseers, by their most gifted and competent men—an example, which, if imitated by future legislatures, and by the corporators, will restore to the university, the affectionate regards of the whole people, lost to some extent, by fifty years of sectarian and political exclusiveness and illiberality.

By the provisions of the act of 1851, it became the duty of the legislature of 1853, to elect ten overseers. Day after day, no action was taken towards the performance of this duty. Efforts were made by gentlemen, who were anxious to follow the example of the legislature of 1852, and select persons of all sects and parties, to induce the leading members of the majority to hold a caucus with the minority, for the nomination of candidates. Mr. President: I know that these efforts were made—but they were made in vain. Under the pressing influences of men outside of the legislature,—men who claim to be the exclusive friends of the university,—the political majority of the legislature of 1853, went into a party caucus, and nominated ten candidates, eight of whom were of their own political faith. One political party, that gave more than a fourth of the votes of the State, at the last election, was entirely excluded from the list of candidates. This is the way the political majority of the legislature of 1853, responded to the example of liberality, set by the legislature of 1852. Sir, I assert what I know to be true, that this act of partisan exclusiveness, was performed under the influences of the men, in, and out of the legislature, who for years, have justified the exclusiveness and illiberality which have prevailed in the corporation and board of overseers.

Mr. HUNTINGTON, of Northampton, (interrupting). I wish to inquire of the gentleman from Natick, whether he intends to charge upon Harvard College, the action of a political party, here, last winter?

Mr. WILSON. I will tell the gentleman from Northampton precisely what I mean. There is a class of men in, and about the city of Boston, who seem to think that they were born to guard, guide, govern, direct and control, Harvard College. With the cry of "No party! No sect!" upon their lips, they have ever evinced the spirit of partisan and sectarian bigotry, intolerance, and exclusiveness. These men strongly objected to the act of 1851, but they acquiesced in it,

because they could not help themselves. Last winter, knowing that there were men here whom they could use, they came here, and used these men to effect their purpose.

Mr. HUNTINGTON. I hope the gentleman from Natick, does not mean to charge the acts of that party, upon the corporators of the college.

Mr. HILLARD, (in his seat). Or on the city of Boston.

Mr. WILSON. I do not, Sir, mean to charge it directly, or indirectly, upon the corporators of that institution, upon the president of that institution, or upon the overseers of that institution. I charge it upon a certain class of individuals, who seem to think that they own the institution, president, corporators, overseers, and all—a class of individuals who assume it to be their mission to keep Harvard College from the influences of the outside barbarians. I would not, if I could, take Harvard College from one sect of religionists, and place it under the control of another sect. I would not take it from the control of one political party, and place it under the control of another political party. I would introduce into its government men of all religious sects and of all political parties, men of genius and knowledge; men devoted to the cause of sound learning and literature; men of liberal ideas; men who would bring that institution, founded by our fathers in their days of weakness, abreast of the progressive march of the age, and within the circle of popular sympathy.

Mr. President: In 1850, Francis Bowen, editor of the *North American Review*, was nominated Professor of History by the corporators of Harvard College. On the 6th day of February, 1851, his nomination came up for confirmation before the board of overseers in the Senate-Chamber. A majority of the board of overseers of that year, believed that he entertained sentiments and opinions which unfitted him to be a teacher of history in that university, or anywhere else in America, and he was rejected—ignominiously rejected—rejected for sentiments and opinions that disqualified him to be the teacher of American youth; and rejected, also, for the historical ignorance he had shown, for the perversions, misquotations, and blunders he had made in defending his obnoxious sentiments and opinions.

Sir, I ask the gentleman from Boston, (Mr. Lothrop,) if the nomination of Francis Bowen to the Professorship of History, by the corporation of Harvard College, in 1850, was an evidence of the desire of the men who control that institution, to keep it along with the wants of the people, and the spirit of the age? Are such sentiments and opinions as Bowen has expressed for years through the *North American Review*, such sentiments and opinions as fit him to teach the young men of Massachusetts, and of the country? Are such historical mistakes, blunders, and perversions, as he has exhibited in his Hungarian controversy, evidences of the qualifications to teach the young men of Harvard? Is such dishonesty as he has shown in garbling historical authorities, an evidence of fitness for the chair of the Professorship of History in the oldest university of the country? Is such a temper as he has manifested in the controversies growing out of his historical discussions, an evidence of his fitness—of his impartiality? His sentiments, opinions, historical ignorance, mistakes, perversions, blunders, plagiarisms, and garbling of authorities, were not unknown to the corporators when his name, in January, 1851, was submitted to the board of overseers. When, on the 6th of February, his nomination came up for confirmation, they were there—not to withdraw the nomination, in obedience to the almost united voice of the American press and the American people, who loathed and abhorred his sentiments—but they, and the peculiar friends of the college were there, to sustain the man whom the voice of the people had pronounced unfit to be the teacher of American youth. And, Sir, when the majority of the board of overseers had rejected their nomination, that board of corporators, sustained by the self-constituted friends of the college, seized the first accidental opportunity that turned up, to place that man in the chair of the Professorship of Moral Philosophy.

These men knew Bowen's sentiments; they knew he had been proved ignorant of the subjects he professed to understand; they knew he had been convicted of dishonesty in garbling, perverting, and misquoting historical authorities; they knew that the public, with a voice approaching unanimity, demanded his rejection; yet they pressed his nomination, and when that nomination was rejected, they seized the first opportunity to obtain a snap-judgment for him, and placed him in a professor s chair. Does the member from Boston, (Mr. Lothrop,) think this an evidence of liberality—of a desire to keep along with popular opinion?

Mr. President: The men who have thus, in defiance of the popular voice, sustained Francis Bowen, cannot plead ignorance of his sentiments and opinions. For several years he has edited the *North American Review*—a journal which claims to be the leading literary organ of the country; but which, in comparison with the English Reviews, in ability, learning, and scholarship, is something like a comparison between a

Cape Cod fishing-smack and a line-of-battle ship. Through the columns of this journal, for years, he has avowed sentiments and opinions which show that whatever passes through his mind is perverted—that it is impossible for him to comprehend the true relations of events, or to give a truthful and philosophic view of the events of history in the old world or in the new—of the events of the past, or of the events of the present day. Narrow, bigoted, intolerant, he and the class of which he is the head, have converted the *North American Review*—once graced by the genius and learning of Edward Everett, and the ripe scholarship and comprehensive views of Alexander H. Everett; a journal once presided over by that liberal and true-hearted scholar, John G. Palfrey; by Jared Sparks, who has done more for American history than any other man in the country; and by other eminent men, who made the *Review* worthy of the country and of its rising literature—he, and the class of which he is the head, have converted that *Review* into a narrow, intolerant, bigoted organ of that conservatism which shrinks from everything progressive, at home or abroad. Could the spirit of William Gifford—who battled with such ferocious vigor and ability through the *London Quarterly Review*, against the spirit of progress, against the rights of the many and for the exclusive privileges of the few—come back to earth, he would be delighted with its tone of fanatical conservatism, if he did not feel utter contempt for its want of power, vigor, learning, and ability. Through the columns of that journal, Francis Bowen has poured out his slanders and libels upon the great leaders of European Republicanism. Men illustrious for genius, ability, learning, eloquence, and self-sacrificing patriotism—men who have perilled all for the cause of republicanism; men who have been driven into exile for their devotion to popular rights—are sneered at, libelled, and slandered, by this Professor of History—this teacher of Moral Philosophy—through the pages of his journal.

When the reaction of 1850 overran Europe—when the high hopes excited by the popular revolutions of 1848 were buried in the graves and dungeons of the martyrs of freedom, quenched in the blood of the people; when the voice of freedom was heard only in the murmurs of the down-trodden masses, or in the sad accents of their exiled leaders; when Hungary went down before the armed intervention of Russia; when the hopes of Italy fell before the soldiers of Louis Napoleon; when the hopes of the friends of republicanism in France, Italy, Germany, Hungary, and on all the continent had failed; when the prisons were crowded with patriots; when banishment was the sad fate of some of the noblest men of the age; when Kossuth was languishing in his Turkish exile—Francis Bowen placed the *North American Review* on the side of the oppressor, and falsified and garbled even the oppressor's historical authorities, in order to blast the names of the champions of freedom. When Kossuth was in a Turkish prison, Francis Bowen sneeringly called him "a renegade," "a fanatic and ultraist," "a demagogue and radical of the lowest stamp." Such were the epithets applied to one whom so many now here have welcomed to this Commonwealth, where he won all hearts by his noble qualities of mind and character. Mazzini, Garibaldi, and the Italian patriots, are denounced as "conspirators" and "brigands." And, Sir, this man—this libeller of European republicanism—this narrow, bigoted advocate of a conservatism that shrinks from all change, is the man selected by the corporators of Harvard College to teach the young men of that University history and moral philosophy!

Mr. President: while this Convention has been in session, another article has appeared in that *Review*, which has met the sternest rebuke of the press of the country. This article is in perfect consistency with its general tone and character. I hold this Professor of Moral Philosophy personally responsible for every line and sentence of that article. He is the editor of the *Review*, the articles in which appear without the names of the writers. He is responsible to the literary public, to the country, and the world, for its articles. No matter who he employs, whose brains he taxes, whether he gets some one here, or whether he purloins his articles from French absolutist writers without giving any credit, he is morally and legally responsible for what appears in that journal. The New York *Commercial Advertiser*, a journal of the conservative school, which has heretofore sustained the *North American Review*, condemns the article in the most pointed manner. Says the *Commercial*:—

"The July number of that periodical contains an article entitled 'France, England, and America,' from which we must strongly and earnestly dissent, as utterly unworthy of a writer living in a republic, and professedly entertaining republican opinions. If the *North American Review's* conservatism leads to the conclusions broached in the article under notice, we judge it to be high time that its publication office be removed from Boston to Paris, Vienna, or St. Petersburg.

"The general principles laid down at the commencement of the above quotation, the entire tone of the article in question, and the offensive and contumelious epithets heaped upon the friends

of republicanism upon the continent of Europe, betray the writer's secret dislike of republican institutions, and his heart-felt admiration of absolutism. Not the writer, however, but the *North American Review is to be held responsible* for the publication and circulation of such sentiments; and much as we have hitherto respected that periodical for its conservative tone and manly but courteous independence, we are constrained now to say, that if such are hereafter to be its teachings, it will no longer be a fit instructor for the people of the United States, and ought to be repudiated by every American citizen."

The Boston *Evening Transcript* quotes these remarks with approbation. Says the *Transcript*:—

"We notice with pleasure that a journal of the high character and ability of the New York *Commercial Advertiser*, administers a severe rebuke to the editor of the *North American Review* for the anti-republican sentiments expressed in the article on 'France, England, and America,' in the July number. We believe the *Commercial Advertiser* expresses the almost universal voice of the public upon this question; for, however much persons may differ upon affairs of domestic policy which relate to the government, we think that few can be found to sympathize with the *torgism of the North American Review*."

The New York *Tribune*, whose sympathies are on the side of freedom at home and abroad, notices the *Commercial Advertiser's* rebuke of Bowen in the following language:—

"The *Commercial Advertiser* is mildly shocked by an article in the last *North American Review*, justifying the usurpation of Louis Napoleon, effected, as it was, through perjury, treason, and wholesale murder; declaring him 'the lawful heir of an empire;' denouncing the republicans of France as an insignificant faction composed of 'a few poets and theorists, four or five journalists, and one or two thousand ruffians!' and asserting that '*The coup d'etat of Louis Napoleon should have been a matter of congratulation to good citizens everywhere*, and that 'The dynasty of Napoleon, restored at last to its natural place in the affections of the French people, ought to be cordially recognized and supported by the active sympathies of the country.'"

"How came the *Commercial* to have opened its eyes so tardily? When that infamous *Review* was industriously and unscrupulously engaged in lying down the patriots of Hungary, and defiling their green graves with its venom, we cannot remember that the *Commercial* devoted any considerable space to an exposure and reprobation of the palpable falsehoods it profusely vomited through issue after issue. When a Whig board of overseers, reversing the just action of its Coalition predecessor, rewarded this base successor of Benedict Arnold with the Professorship of Philosophy in the State's University, we heard no whisper of remonstrance from the *Commercial*. Then why not let the creature earn another instalment of despots' gold, red with the blood of martyred republicans, as quietly as before?"

I commend, Mr. President, this language of the *Tribune* to the consideration of the gentleman from Boston, (Mr. Hillard,) who charged us the other day with the crime of proscription for rejecting his nomination for the Professorship of History, "thereby," in the words of Bowen, "despoiling him and his family of their daily bread." I commend this language of the Whig *Transcript*, *Commercial Advertiser*, and *Tribune*, especially to gentlemen who last winter placed in the board of overseers persons willing to aid in confirming the man who had once been justly rejected as unfit to be the teacher of the young men of the country.

I have said, Mr. President, that Francis Bowen, in his articles in the *North American Review*, on "The War of Races," and on the Hungarian question, had exhibited historical ignorance; that he had misstated, misquoted, and garbled historical authorities. In reply to the charge made by the gentleman from Boston, (Mr. Hillard,) that he had been proscribed, in 1851, for his opinions, I took occasion to say that he was rejected, not alone for his opinions, but for the historical ignorance he had manifested in supporting his opinions. The member from Danvers (Mr. Braman) travelled out of his line of argument, the other day, to say that this was a bold declaration for me to make. A bold declaration for me to make!

Sir, here and now I repeat the declaration. Here and now—on the floor of this Convention, which has enrolled in its list of members the gentleman from Boston, (Mr. Hayward,) the gentlemen from Roxbury, (Mr. Lowell and Mr. Putnam,) three of the seven corporators of the university, the two learned and distinguished professors of the law school of the university, (Mr. Parker and Mr. Greenleaf,) and the gentlemen from Boston, (Mr. Lothrop and Mr. Hillard,) members of the board of overseers of the university—I renew and repeat the declaration that Francis Bowen was rejected in 1851 from the Professorship of History for his sentiments; for his historical ignorance, and for misstating, misquoting, and garbling historical authorities. Here and now I proceed to establish the truth of this declaration by authorities that cannot be questioned here or elsewhere.

In January, 1850, Francis Bowen's first article on "The War of Races" appeared in the *North American Review;* in April, 1850, his second article was published. It is said, Sir, that these articles secured his appointment of Professor of History by the corporators of Harvard University.

This may or may not be so. A distinguished literary gentleman of Cambridge is said to have remarked that Mr. Bowen fell into eight historical blunders in his articles on the Hungarian question, for which he was made Professor of History —that in defending his blunders he told eight falsehoods, for which he was made Professor of Moral Philosophy. [Laughter.] Of course, Sir, I do not vouch for the literal accuracy of this criticism of the poet and scholar to whom I allude; but, really, the witticism gives a not very incorrect idea of the character of these appointments.

Whatever may have been the reasons of the corporators for his nomination, the opinions which unfitted him to be the teacher of American youth had been published when it was made; and when his name was submitted in 1851 to the overseers, his historical blunders, mistakes, misquotations, and plagiarisms, had been exposed. His articles were severely criticized in various quarters—by the presses of Boston, New York, and Washington—by journals of every shade of political opinion. They were almost universally condemned by the press of the country, so far as it saw fit to notice them at all. Conducting at the time a public journal in this city, I had an opportunity to know something of the opinions of the press on the subject. My friend from Concord, (Mr. Hazewell,) a gentleman of vast historical acquirements—a sort of walking encyclopedia of historical facts—through the columns of the Boston *Times*, had exposed the ignorance, perversions, and blunders of the author of these articles. The *Evening Transcript*—edited by Epes Sargent, a gentleman of literary reputation—had severely criticized them much to the annoyance of Mr. Bowen and his little coterie of "mutual admiration" friends. The New York *Evening Post*—edited by William C. Bryant, one of the first, if not the first, of living American poets, a scholar and man of genius who comprehends the spirit of free institutions—had also condemned the sentiments and exposed the errors of these articles. The New York *Tribune*—conducted by Greeley, Dana, Ripley, Taylor, and others, combining an amount of talent and culture unsurpassed, if equalled, in the press of this country—had likewise criticized and exposed Mr. Bowen's historical blunders, mistakes, and misrepresentations. The Washington *Republic* and other leading journals, condemned, not only the sentiments and opinions avowed in those *North American* articles, but they showed that the writer pretended to knowledge he did not possess, and that he did not deal honestly by the authors he pretended to cite.

But the most thorough reply to Mr. Bowen appeared in the *Christian Examiner* of May and November, 1850, from the pen of Mrs. Mary Lowell Putnam, of Roxbury. Mrs. Putnam is a lady of distinguished ability and learning, whose rare knowledge of the languages and literature of Eastern Europe, gave her peculiar facilities for such a controversy. The member from Roxbury, (Mr. Putnam,) himself a member of the corporation of the university, and the learned editor of the *Christian Examiner*, can tell you, Sir, that Mrs. Putnam is a lady of eminent learning, and better fitted to treat the topics discussed by her than any other person in the country. Mr. Webster, at the congressional banquet to Kossuth, quoted her as the highest American authority on the history of Hungary.

Well, Sir, in the *Christian Examiner*, Mrs. Putnam proved, in a manner entirely satisfactory to every one who read her reply, that Bowen's articles were a tissue of historical blunders, of perversions, of falsifications, and of plagiarisms. She demonstrated that he had pretended to knowledge on the subject he did not possess. She demonstrated that he had deliberately misquoted the authorities on which he pretended to base his articles, and had perverted them by omissions to such an extent, and in such a manner, as to make them appear to say just the reverse of what they really meant. She showed that his first article was taken almost wholly from the *Revue des Deux Mondes*, a French magazine, conducted by men hostile to freedom and democratic institutions—whose statements and arguments he had perverted in a most outrageous manner in order to make out a case against Hungary and in favor of Austria. He had placed at the head of his article the work of Degerando, a reliable French writer on Hungary. Mrs. Putnam showed that he had not used that work at all in the article, and that "there is not," to use her language, "a statement of fact or opinion in the article which can be attributed to Degerando; and that the greater part of it is in direct contradiction to the statements of that author." Mr. Robert Carter, of Cambridge, who has published a pamphlet upon this controversy, states that of the sixty pages of Bowen's first article, fifty are translated, without acknowledgment, from the partisan French magazine to which I have referred. Mrs. Putnam proves that in his zeal to vindicate his anti-Hungarian views he went beyond the French writers he plagiarized, so "that" to use her own words, "there is hardly a sentence in which an error is not either expressed or implied."

One or two instances of Bowen's perversions will be sufficient to show the character of the articles, which, it is said, secured his nomination

to the Professorship of History. In giving an account of Kossuth, he translates, in his first article, without acknowledgment, from the French magazine, passing it off as his own until he arrives at a passage in which the French writer says that Kossuth is "a democrat of the new revolutionary school, who will seek to get rid of the nobility when he shall have got rid of Austria," and that he "has not feared to overthrow the whole political and social state of his country, to realize dreams of universal equality, more chimerical in Hungary than anywhere else." This passage Bowen is too dishonest to plagiarize. It will not answer his purpose. So he omits it and inserts a piece of his own composition, in which Kossuth is accused of being an aristocrat, whose object was to preserve the feudal privileges of the nobility and to maintain the aristocratic supremacy of the Magyar race! Such is the bitter hostility of Bowen to the Hungarian cause,—to Kossuth and his associates,—that he will not plagiarize what the French writers have said in favor of the Hungarians, although he is not ashamed to steal their slanders upon Hungary and its patriotic defenders. In another case, in order to throw discredit upon the government of Kossuth, he pretends to quote from a German work on the history of Hungary; while in reality, as Mrs. Putnam shows, the quotation is not to be found in the German work, but is a mere extract from an anonymous article in the *London Athenæum*. And these are not rare instances at variance with the general character of his articles. I might, if I had time, quote several instances to prove his ignorance of the historical subjects discussed by him, and his perversions of the authorities he pretends to quote. I will read what Mrs. Putnam says in the *Christian Examiner*, of the first of his articles:—

"We are reluctantly compelled to affirm that there is no portion of the article on the 'War of Races,' on which the reader can safely rely. We do not exaggerate, and we believe that all those persons who have an acquaintance with the history of Hungary, and who have read the article in the *North American*, will sustain us, when we say that there is hardly a sentence in this article in which an error is not either expressed or implied; and in many portions of it error is so interwoven with error that the baffled critic turns from the task of refutation as from the entrance to an inextricable labyrinth. We are disposed to believe that the absence of any formal and labored confutation of the article on the 'War of Races'—to which absence the author appeals as a proof of its invulnerability—may be attributed to the herculean labor which the task of correcting all the errors contained in this historical essay seemed to involve, and the great length to which such a confutation must be extended, if the task were thoroughly executed. These errors pervade every part of the article, and are almost as numerous in that portion which relates to those periods of Hungarian history which are most familiar to the general reader, as in those whose investigation requires a certain degree of research."

This description is fully justified by the errors she exposed in her article in the *Examiner*.

Sir, before Mrs. Putnam's reply appeared, a reply to the *North American Review* had been published in New York, from the pen of Count Gurowski, a Polish nobleman of great learning and ability, who is profoundly acquainted with the affairs of Eastern Europe, on the history of which he has published several volumes in French and German. Few men in the new world or the old are better read in European affairs. You, Mr. President, (Mr. Sumner,) can bear testimony to his vast acquirements and profound knowledge of European history. He is an impartial critic, for he is no partisan of the Hungarians and no friend to Kossuth. He says of Bowen's first and principal article:—

"It is a thick and dark forest of errors in historical, or rather unhistorical quotations, as well as in reasoning. Almost every line requires rectification. Almost all motives assigned to the actions of individuals, as well as to the mass of the people in Vienna, in Hungary, and in the Sclavonian countries, are put in a false light, and denote, by the quoted French authorities, perfect ignorance or perfect bad faith. As most of the facts are misrepresented, or shown in the falsest possible light, so almost all the deductions are at least erroneous; and it cannot be otherwise, as a disfigured fact very naturally produces the most false conclusions; and the number of these is *infinite*, so as to render their rectification impossible."

Such is the opinion expressed by a critic friendly to Mr. Bowen—for Count Gurowski, at that time, supposed that the Cambridge professor was deceived and misled by the French magazine writers.

Smarting under Mrs. Putnam's exposure of his gross ignorance, falsifications and misquotations, he came out in two rejoinders in the *Boston Daily Advertiser*. They were scandalously abusive of Mrs. Putnam, accusing her of "vanity," of "hardihood and recklessness"—of "profound ignorance of history and every other subject—except a knowledge of the Magyar language"—and lastly, of having "deliberately forged historical statements in order to damage his reputation and deprive him of office." His language towards her throughout his reply was unmanly and disgracefully unworthy of the office which he held. I suppose he thought Mrs. Putnam had travelled out of her woman's sphere, and that he might, as he did, sneeringly question her claim to the au-

thorship of the article. He did not, however, Sir, descend low enough to call her *Mr.* Putnam. To the member from Danvers, (Mr. Braman,) was reserved the high honor of originating that feeble sneer at a woman. It is probable that the tone and temper exhibited towards Mrs. Putnam by Bowen, in his replies, may have won for him the admiration and support of the member from Danvers. "A fellow feeling makes us wondrous kind." Bowen will doubtless be highly gratified to learn that there is another man in Massachusetts—and he a member of this Convention—capable of offering an insult to a woman.

Bowen, in his reply to Mrs. Putnam, attempted to defend himself by gross perversions and misquotations of her language, but I have not time to quote these perversions and misquotations. There were eight points in the ancient history of Hungary, on which she had exposed his ignorance, and upon these he attempted a defence. I hold in my hand a review of that defence, from the pen of Mr. Robert Carter, a gentleman of great historical research and ability. These articles, from the pen of Mr. Carter, were first published in the Boston *Atlas*, the leading Whig journal of Massachusetts at that time, under the charge of my friend from Boston, (Mr. Schouler,) who, to his honor be it said, never allowed his columns to be desecrated by defences of European despotism, or libels upon European republicans. Mr. Carter clearly demonstrates, that in his eight points, Mr. Bowen was mistaken, and that in defending them, he has been guilty of the most shameful garbling of historical works, and of almost equally shameful ignorance of historical facts, with which, at least, every *Professor* of history in the civilized world ought to be acquainted.

I will give but one example of the character of this portion of Mr. Bowen's reply. He had stated in his article that the Turks were expelled from Hungary by John Sobieski, King of Poland, in 1683. Mrs. Putnam pointed out that he was mistaken—that they were expelled by Prince Eugene, in 1718, thirty-five years later. Mr. Bowen, in reply, maintained that he was right, and quoted, in proof, a sentence from the first volume of *McCulloch's Universal Gazetteer*, in which it is said, (speaking of the Hungarian nobles,) "So great was their antipathy to the Austrian yoke, that in 1683 they rose, with Tekeli at their head, and called upon the Turks to relieve them from servitude. Austria, however, succeeded by the help of John Sobieski and Prince Eugene, in expelling the Turks from these countries," &c. This was as far as Mr. Bowen thought it prudent to quote. He omitted the conclusion of the sentence, which reads thus: "Austria, however, succeeded by the help of John Sobieski and Prince Eugene, in expelling the Turks from these countries, and they were finally secured to it by the treaties of Carlowitz and Passarowitz, in 1718."

"The character of this transaction," says Mr. Carter, "is easily understood. Mr. Bowen has a controversy with Mrs. Putnam about the date of an important event in history. He states one year as the date, and she states another. He finds in *McCulloch's Universal Gazetteer*, a passage in which both dates are mentioned—the date for which Mrs. Putnam contends, being given as that of the event in question, while the other is introduced as the date of a totally different event. Mr. Bowen quotes that portion of the passage which contains the date for which he was contending, and stopping at a comma, suppresses the sentence which proves the truth of Mrs. Putnam's position!"

Mr. Bowen subsequently copied his reply from the *Daily Advertiser* into the *North American Review* for January, 1851. Sometime in the previous month, Mr. Carter, in the *Atlas*, had pointed out his garbling of McCulloch. Mr. Bowen accordingly withdrew the quotation, and explained its withdrawal, by saying that it had been accidentally substituted by "a mistake of his copyist," for another passage from the second volume of McCulloch. That is to say, Mr. Bowen's amanuensis accidentally copied a passage from the first volume of McCulloch instead of a passage from the second—a very likely mistake, which, it seems, Mr. Bowen did not discover when he read the proof, nor until some weeks after, when it was pointed out by Mr. Carter, in the *Atlas*.

The passage from the second volume, which Mr. Bowen says he meant originally to quote, reads thus:—[Speaking of Turkey under Solyman the Magnificent.]

"At this period, the Turkish empire was unquestionably the most powerful in the world. Nor had this mighty power even then reached its greatest height. Solyman was succeeded by other able princes, and the Ottoman arms continued to maintain their ascendancy over those of Christendom, until, in 1683, the famous John Sobieski, King of Poland, totally defeated the army employed in the siege of Vienna. This event marked the era of their decline."

Now there is here nothing whatever about Hungary, and nothing that throws light on the date of the expulsion of the Turks from that country. It is difficult to conceive for what purpose it was quoted, except to fill an inconvenient gap. Let me, however, ask the attention of the Convention to the whole of the passage, as it appears in McCulloch, and not as Mr. Bowen has published it.

The point, it will be recollected, is, whether the Turks were expelled from Hungary in 1683, by Sobieski, as Mr. Bowen asserts, or in 1718, by Prince Eugene, as Mrs. Putnam maintained. Here is what McCulloch says:—

"The Ottoman arms continued to maintain their ascendancy over those of Christendom until, in 1683, the famous Sobieski, king of Poland, totally defeated the army employed in the siege of Vienna. This event marked the era of their decline." [Thus far Mr. Bowen quoted and then stopped for a very good reason. The next sentence says:] "For a while they continued to oppose the Austrians and Hungarians with doubtful fortune and various success; but the victories of Prince Eugene gave a decisive superiority to the Christians."—Vol. ii. p. 977.

Sir, these are merely examples which I have selected for their brevity out of scores of cases. There is scarcely a quotation in his articles which is not garbled so as to pervert the sense of the author. Mr. Carter says, after a thorough examination and analysis of his articles: "I do not believe there can be found elsewhere in the English language in the same compass, so many blunders, so many falsehoods, so much literary dishonesty."

Mr. President: On the 6th of February, 1851, when the overseers of Harvard College assembled in the Senate-Chamber to act upon Mr. Bowen's nomination for Professor of History, the knowledge of these things, brought forward and proved as they were by persons of eminent ability and learning, and to that day—aye, to this day—unanswered by Bowen or his friends, convinced a majority of its overseers that duty to the literary character of the country, to the reputation and welfare of the university, demanded that they should vote against his confirmation.

His sentiments and opinions, in the judgment of a majority of the board of overseers, unfitted him to be the teacher of American youth. Those sentiments better fitted him to be Professor of History at Vienna, or St. Petersburg, than at Cambridge. Persons of rare learning and unquestioned ability, had proved him to be ignorant of the historical subjects he pretended to be master of, and that he had misquoted, garbled and misstated the authorities upon which he professed to base his opinions. The member from Danvers may question the ability of the members of the majority of the board of overseers, in 1851, to decide upon the fitness of Mr. Bowen, for the Professorship of History. But of the ability and intelligence of the members of that board, I need not here speak. Twenty-two of them, I think, are members of this Convention, and when I say that the President of this Convention, (Mr. Banks,) the member for Berlin, (Gov. Boutwell,) the member from Bernardston, (Lieut. Gov. Cushman,) the member for Erving, (Mr. Griswold,) the member from Worcester, (Mr. Davis,) the member from Springfield, (Mr. Beach,) the member for Abington, (Mr. Keyes,) and other gentlemen I cannot stop to designate, were members of that board of overseers, I am sure no one will question their ability to judge of the fitness of Francis Bowen for the Professorship of History. If the member from Danvers were present, I would say to him, that these gentlemen were quite as well informed, in regard to Mr. Bowen's qualifications, at the time of his rejection, as were the corporators at the time of his nomination.

That act of the majority of the board of overseers on the 6th of February, 1851, received the approving plaudits of the people of Massachusetts; and, indeed, of the whole country, without distinction of sect or party, except a little coterie of "mutual admiration" friends in and about this city, and that small class of conservatives, whose bigoted and blind fanaticism makes them sympathize with the privileged few everywhere, and renders them the milignant enemies of liberal ideas and liberal men alike in the Old World and in the New.

About the time of Bowen's rejection, he raised the cry that "a grand crusade of the Coalized Democratic and Free Soil parties has been invoked, that they might obtain possession of the government of the State, for the express purpose of depriving him of an honorable appointment, exclusively literary and educational in its character, which he held, and thereby of despoiling him and his family of their daily bread." The Coalition, I will venture to say, is ready to take whatever responsibility may belong to the deed. And, if the gentleman from Boston, or the member from Danvers, consider him a victim of the Coalition; if they wish to take him upon their shoulders, or to put him on the shoulders of their party, they are welcome to the honor of the burden, and still more welcome to its weight.

Mr. GREENE, of Brookfield. I would like to say that if we go on with this debate, we shall evidently occupy the whole day to-morrow upon it; and as it is desirable that we should close the session of this Convention some time this summer, I move the previous question, and I appeal to the patriotism of gentlemen present to sustain it.

The demand for the previous question was sustained.

The question was then taken on the proposition to strike out the words "hereafter granted" and it was rejected.

The PRESIDENT. The question now is on the final passage of the resolution.

Mr. LIVERMORE, of Cambridge. I move a reconsideration of the vote by which the yeas and nays were ordered on the final passage. I think there is no necessity for the yeas and nays.

Mr. BIRD, of Walpole. I move that the Convention adjourn.

[Loud cries of "No!" "No!" "No!"]

Mr. NAYSON. I submit that the previous question having been ordered, a motion to adjourn is not in order.

The PRESIDENT. The motion to adjourn is always in order.

Mr. NAYSON. The uniform practice, both in this body as in the legislature, has been, that when the main question has been ordered to be put, the motion to adjourn has been ruled out of order.

Mr. BIRD. In order to settle any difficulty in that respect, I will withdraw the motion to adjourn.

The question now recurred on the motion to reconsider the vote by which the yeas and nays were ordered. The motion to reconsider was agreed to.

The question then being on the motion ordering the yeas and nays, on a division, they were ordered—ayes, 125; nays, 35.

The yeas and nays were then taken, and resulted —yeas, 121; nays, 28—as follows:—

YEAS.

Allen, James B.
Allen, Parsons
Allis, Josiah
Andrews, Robert
Austin, George
Baker, Hillel
Bancroft, Alpheus
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, William, Jr.
Bliss, Gad O.
Boutwell, Geo. S.
Breed, Hiram N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Buck, Asahel
Carter, Timothy W.
Caruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clark, Ransom
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Crittenden, Simeon
Cross, Joseph W.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
French, Rodney
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Giles, Charles G.
Giles, Joel
Goulding, Jason
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hallett, B. F.
Hapgood, Seth
Harmon, Phineas
Heath, Ezra 2d,
Hood, George
Howland, Abraham H.
Hoyt, Henry K.
Knowlton, J. S. C.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Marble, William P.
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parker, Adolphus G.
Parsons, Samuel C.
Partridge, John
Penniman, John
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David, S.
Royce, James C.
Schouler, William
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville
Stiles, Gideon
Sumner, Charles
Sumner, Increase
Tilton, Horatio W.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Weston, Gershom B.
Wilson, Henry
Wood, Charles C.
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Ball, George S.
Brinley, Francis
Bullock, Rufus
Bumpus, Cephas C.
Crowell, Seth
Crowninshield, F. B.
Eames, Philip
Hayward, George
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Huntington, Charles P.
Kellogg, Giles C.
Kendall, Isaac
Knight, Hiram
Livermore, Isaac
Lothrop, Samuel K.
Parker, Joel
Parker, Samuel D.
Putnam, George
Reed, Sampson
Stevens, Charles G.
Tyler, William
Wetmore, Thomas
White, George

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Alley, John B.
Alvord, D. W.
Appleton, William
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bird, Francis W.
Bishop, Henry W.
Blagden, George W.
Bliss, William C.
Booth, William S.
Boutwell, Sewell
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn

Briggs, George N.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Bryant, Patrick
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cogswell, Nathaniel
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Curtis, Wilber
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Durgin, John M.
Earle, John M.
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Ely, Joseph M.
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fiske, Emery
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Freeman, James M.
French, Charles A.
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner, Henry J.
Gardner, Johnson
Gilbert, Washington
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves John W.
Gray, John C.
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Haskell, George
Haskins, William
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Hewes, William H.
Heywood, Levi
Hillard, George S.
Hindsdale, William
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Howard, Martin
Hunt, Charles E.
Hunt, William
Huntington, Asahel
Huntington, George H.
Hurlburt, Samuel A.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jackson, Samuel
Jacobs, John
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kingman, Joseph
Kimball, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, William H.
Kuhn, George, H.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meader, Reuben
Miller, Seth, Jr.
Mixter, Samuel
Moore, James M.
Morey, George
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Nichols, William
Norton, Alfred
Noyes, Daniel
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Paige, James W.
Paine, Henry
Park, John G.
Parris, Jonathan
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Daniel A.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Plunkett, William C.
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, John A.
Rantoul, Robert
Read, James
Richardson, Nathan
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sanderson, Amasa
Sanderson, Chester
Sargent, John
Sheldon, Luther
Sherman, Charles
Sherril, John
Sikes, Chester
Simmons, Perez
Sleeper, John S.
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Train, Charles R.
Turner, David
Turner, David P.
Tyler, John S.
Underwood, Orison
Upham, Charles W.
Upton, George B.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Walker, Samuel
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus
Wheeler, William F.
White, Benjamin
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Williams, J. B.
Wilson, Milo
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel
Wood, William H.
Woods, Josiah B.

Absent and not voting, 270.

So the resolve was passed.

On motion by Mr. FRENCH, of New Bedford, at a quarter before seven o'clock,

The Convention adjourned until to-morrow morning at nine o'clock.

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FRIDAY, July 22, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday's proceedings was read.

*Order to Print.*

The following order, submitted yesterday by the gentleman from Pawtucket, (Mr. Tyler,) was taken up for consideration :—

*Ordered*, That the Committee on Reporting and Printing, be instructed to append to the published Debates, Poole's Statistical View of the Members of the Convention.

To which the following amendment had been moved by Mr. Earle, of Worcester. Add the following words : " with the amount received by each for travel and attendance."

Mr. TYLER moved that the order be referred to the Committee on Reporting and Printing the Debates and Proceedings of the Convention.

The question on this motion was put by the President, and declared to be decided in the affirmative.

Mr. GRISWOLD, for Erving, demanded a count.

Mr. EAMES, of Washington, said he thought it would be better to adopt the amendment, before sending the order to the Committee.

Mr. HALLETT. As one of the Committee, to whom it is proposed to refer this order, I desire simply to make a suggestion.

Mr. ASPINWALL. I rise to a question of order. I believe, Sir, no debate is permitted.

Mr. HALLETT. The gentleman is somewhat premature with his point of order. I rose for the purpose of moving that the order be laid upon the table. I hope we shall have no more printing, and no more expense of that sort. We are already accumulating our expense for printing. I move that it be laid upon the table.

The PRESIDENT. The question was put on the motion of the gentleman from Pawtucket, to refer the order to the Committee, and the Chair decided that motion carried. The gentleman for Erving has demanded a count.

Mr. GRISWOLD. I withdraw the demand.

Mr. KNOWLTON, of Worcester. I move to strike out the word "instructed," so that it shall be a mere matter of inquiry.

The PRESIDENT. The order is merely in the nature of inquiry, and is referred to the Committee on Reporting and Printing.

*Limitation of Debate.*

Mr. BUTLER moved to take up from the table the order submitted by the gentleman from Medway, (Mr. Brown,) in regard to the limitation of debate.

The motion was agreed to.

The order was read as follows :—

*Ordered*, That hereafter, no member, except the chairmen of Committees, be allowed to speak longer than fifteen minutes on any one subject, without leave of the Convention.

Mr. Aspinwall, of Brookline, having on a previous day moved to amend, by striking out the words, " except chairmen of Committees."

Mr. WHITNEY, of Boylston. I would ask if the chairmen of the several Committees have made their final reports ?

Mr. BUTLER. If I understand the motion of the gentleman from Brookline, it is to except the chairmen of Committees.

The PRESIDENT. The gentleman from Brookline has moved to strike out the words, " except chairmen of Committees."

Mr. BUTLER. I can hardly agree to that motion.

Mr. KINSMAN, of Newburyport. I expressed my opinion the other day, with reference to the passage of such an order as this, both on grounds of common fairness, and in consequence of the fact that some of the most important questions we have to consider, are yet to be considered, and I will state as an illustration, the mode in which the amendments we agree to, shall be submitted to the people. There appears to be a difference of opinion on the subject, if we can trust the declarations of gentlemen here, and unquestionably that diversity of opinion must lead to debate ; it ought to lead to debate, and gentlemen ought to have an opportunity to discuss it freely. There are some things so apparent, that it is scarcely worth while to reason about them ; and the injustice of limiting the minority to fifteen minutes, while the chairmen of Committees—all of whom are members of the majority of the Convention—are allowed one hour, is in itself so clear, that it seems hardly worth while to debate it. I shall not debate it. I rose simply to call for the yeas and nays on the adoption of the order.

The call for the yeas and nays was sustained—by ayes, 38 ; noes, 159—one-fifth of those voting being in favor thereof—and the yeas and nays were ordered.

Mr. ASPINWALL, of Brookline. I suppose, Sir, after the intimation of opinion by the gentleman from Lowell, without the slightest reason given for it, in order to convince and thus influence this Convention, it is altogether useless for me to say anything in favor of my amendment. I suppose the gentleman practices upon the principle, that a nod is as good as a wink to a blind horse, and that an intimation from him will carry

the Convention to his side. I do not know how it may be; and whether true or not, I shall say what I think ought to be the action of the Convention in regard to this matter. I disapprove, I have always disapproved, whether I have been on the side of the majority or the minority, of limiting debate. I have never, I believe, voted for any such proposition as is now before the Convention. I have never moved the previous question. I have never seen any use in doing so. I have never seen any good effect result from any of these measures for cutting off debate; but I know the Convention is determined to do something in that way; they have already enacted the half-hour rule, applying to all members except chairmen of Committees. I regarded that as exceedingly unjust. It has already, as every-body has perceived, given to the majority of this body the opportunity to have a fuller expression of their views and opinions than is given to the minority. It is giving them great power; they have every means of arranging all matters to suit themselves; the right of coming into the Convention and explaining fully their views, of going into all the argument and reasoning that they may deem necessary in support of their measures; and then they have the power of preventing the minority from giving their reasons for opposing those measures. The rule was bad enough which limited to half an hour the speeches of those opposing the reports of the Committees, and gave to gentlemen who advocated them, an hour; but it is a little worse now, for it is proposed to limit the speeches of those opposing the adoption of reports, to fifteen minutes, while the chairmen of Committees are to be allowed an hour to present their arguments in favor of such reports. Now, I ask the Convention, whether this is just and equal; whether there is any propriety in the majority assuming the power, as they undoubtedly do, of giving themselves four times the right of speech which they deal out to the minority? If they think so, they will have the privilege of declaring it. I have assumed the privilege of entering my protest against the injustice of such a proceeding, and having done this, I shall trouble the Convention no farther.

Mr. BUTLER, of Lowell. Sir, it is evident what all this means. It is a favorite way—when occasionally a popinjay gets into the Convention, if by chance any should, though whether they do or not I do not mean to express an opinion—in which he endeavors to influence the action of the Convention, by attempting to hold up some one as doing that which he ought not to do, and endeavoring to excite prejudice against an individual, and by that means to influence the action of the Convention, which he can accomplish in no other way. But certainly, Sir, the gentleman from Brookline has no reason to complain. He moved his amendment, and has had an opportunity to advocate its adoption. I merely stated that I was opposed to it, and that was tortured into the fact that I had expressed an opinion that I control this Convention, simply for the purpose of bringing about a change of action on the part of the Convention, which could not be done by argument. The next movement on the programme was, the gentleman from Newburyport demanded the yeas and nays; and thus gentlemen who have no disposition to take up time themselves, are compelled to see the time wasted by taking the yeas and nays. Gentlemen who profess to wish to do no wrong, but to discuss the high principles involved in the questions that are presented, choose to have an hour spent in taking the yeas and nays. Very good. They have the power; let them create delay if they will. They say they never saw any good arise from attempting to cut off debate. It is true, there is little gained by it; because, when a factious minority choose to create delay, they are fruitful in expedients for that purpose, by dilatory motions, by getting up and speaking to questions that are not pertinent to the subject under consideration. When they choose to take that course, of course you cannot limit debate. There is no means of suppressing faction in this world; there never has been, and probably never will be.

Sir, I do not propose to argue this question. We have argued it sufficiently. The chairmen of two Committees have had an opportunity to occupy an hour each upon it. And if any gentleman wishes to debate it, I will give up my portion of the time. I have no desire to say a word. I do not, therefore, see any occasion for an attack being made upon me; but if it is made, perhaps gentlemen will find that the time has gone past when an attack can be made with impunity; that while I allow a sick man to attack me without a reply, I may have occasion to twist the neck of some well man, if they do not let me alone.

Mr. ELY, of Westfield. In view of the manner in which debate has been carried on for the last few days, I think the less we have of it the better; I therefore move the previous question.

Mr. ASPINWALL, of Brookline. I trust I may be allowed to say a few words.

The PRESIDENT. The question is: Shall the main question be now put.

The demand for the previous question was seconded, and the main question ordered.

The question was then taken on the pending

amendment, viz.: that moved by the gentleman from Brookline, (Mr. Aspinwall,) to strike out the words, "except chairmen of Committees," and it was decided in the affirmative.

So the amendment was adopted.

Mr. EARLE, of Worcester. I wish to inquire whether, if this order be adopted, it will require a vote of two-thirds for its suspension?

The PRESIDENT. The Chair is of opinion that it is in the nature of a rule, and will require two-thirds.

Mr. EARLE. If so, I am satisfied.

Mr. KEYES rose and addressed the Chair.

The PRESIDENT. Debate is not in order.

Mr. KEYES. I had no intention to debate. I wish to ask if an amendment is in order?

The PRESIDENT. It is not in order.

Mr. KEYES. I was going to move to strike out the words, "without leave."

The PRESIDENT. No debate is in order.

A MEMBER. I wish to know what the amended order will mean?

The PRESIDENT. It is not for the Chair to explain its meaning. The previous question still applies, and the question now is on the adoption of the order as amended.

The order, as amended, was adopted.

*Amendments to the Constitution.*

Mr. MORTON, of Taunton, moved that the Convention resolve itself into Committee of the Whole, for the purpose of considering the resolves in relation to the mode of submitting to the people, for their approval or rejection, future amendments to the Constitution.

It is, said Mr. Morton, a subject of considerable interest; and it is of some consequence that it should be disposed of as early as possible.

Mr. GRISWOLD, for Erving. Is the motion debatable?

The PRESIDENT. The Chair is of opinion that debate may be entertained.

Mr. GRISWOLD. I hope that this motion will prevail at this time. There are some subjects on the Orders of the Day, that may be disposed of in a short time, and they are matters which ought not to be delayed. I trust we shall now proceed to dispose of them. And I will say, farther, that I suppose—I know, in fact——

Mr. BRIGGS, of Pittsfield. Is this motion debatable?

The PRESIDENT. The Chair is of opinion, upon reflection, that it is not.

The question was taken on the motion of the gentleman from Taunton, and it was decided in the negative.

On motion of Mr. CUSHMAN, of Bernardston, the Convention proceeded to the consideration of the Orders of the Day, the first subject being the resolves in relation to

*The Council.*

The question being upon their final passage.

Mr. CHURCHILL, of Milton. I rise to detain the Convention but a single moment, for the purpose of proposing an amendment, which I do upon consultation with many eminent and leading men of the Convention, of all parties, whose approbation or assent to this proposition, I am happy to say I have received. I respectfully ask the attention of the Convention to this amendment while I read it, that they will consider it for a moment, and they will perceive that there can be no objection to it, even if it has no great virtue in it. It is to add an additional resolution, as follows:—

*Resolved*, That it is expedient to amend the Constitution as follows, to wit: The legislature may provide by law that public notice shall be given of all applications to the Governor and Council, for the remission of the sentences of persons imprisoned for crime.

It will be perceived that it is not intended, by this amendment, to limit, or restrict, or impair, in any way, the exercise of that power hereafter, or to cast any reflection upon the manner in which it has been exercised heretofore. The power to which that amendment refers is one of the highest, most important, and most delicate exercises of sovereignty in the Commonwealth. It touches upon the life and liberty of the subject. It reviews and reëxamines the long and expensive investigations of your courts, and may, in proper cases, reverse their decisions. I do not wish to open, in any way, the debate which has already been had upon the subject of the Council. I do not suppose that the Convention desire to open that debate, and therefore I shall not give any lengthy reasons for this amendment. A similar provision exists in the Constitution of the State of New York; and it is well, in calm times in this Commonwealth, to adopt such rules as will tend to our protection and safety in times of excitement and danger; for, although there may not have been, hitherto, any abuse of the pardoning power—as to which gentlemen differ widely—we may have in this Commonwealth such difficulties as have occurred in New York, and Pennsylvania, and other States; and, in such case, this provision will enable the legislature, in some manner to look after the exercise of that power. It does not make the granting of a pardon dependent upon the giving of notice, but it simply allows the legislature, if it shall

see fit to do so, to legislate upon the matter of notice for such applications. I believe that every gentleman will see that this may be a useful and practical amendment, and that there can be no danger, whatever, in its adoption.

Mr. BOUTWELL, for Berlin. I wish to say, only, that I entirely concur in the object of this amendment, proposed by the gentleman from Milton, (Mr. Churchill). I think it is a proper one. It leaves the matter in this form: if at any time the legislature shall see fit to declare, by law, that public notice shall be given of the intended application of convicts for a remission of sentence, they may do so; and I think that no executive can object, under any circumstances, to such notice. I hope, therefore, that the amendment may be adopted.

Mr. GRISWOLD, for Erving. I dare say, that this amendment may pass; and as it is to be left with the legislature, it makes it less objectionable. I should be reluctant to disagree in a matter of this sort, with the gentleman who has just taken his seat; but if I were a member of the legislature, I should oppose such a proposition in that body; and, therefore, I think it my duty to vote against it here. I suppose the object of the amendment is to bring the government officers in to oppose the pardon.

Mr. CHURCHILL. No such object is intended. It is left to the legislature to provide for the giving of such notice as they may see fit; but it is not to bring the government officers in to oppose a pardon.

Mr. GRISWOLD. Then I want to know what the object is? A convict has ordinarily a hard enough chance. He is generally poor and without means—often without friends; and it is difficult enough for him to gain access to the Council. I cannot, therefore, see any object in this amendment, except to notify the government officers that they may come in and oppose a pardon. It seems to me that it is well enough as it is now, and that the chances are against the convict. I have not reflected upon the question, but with my present views I shall oppose it.

Mr. BOUTWELL. If the Convention will allow me, I will state a case within my own personal experience which will satisfy gentlemen that it is well enough that the public, and especially the prosecuting officers and the judges, should know that such application is made; for it necessarily happens that the hearings are very much *ex parte*. No one will contend that a convict should be released without a just and proper claim upon the clemency of the government. Now, it happened in the case to which I refer, that the Council recommended a convict to the executive clemency. I wrote to the judge who tried the case, and he furnished such information as satisfied me that the pardoning power ought not to be exercised. Now, it is not usually convenient for the executive to go out of his way to ascertain the facts which may be in the possession of individuals, and which may not otherwise come under his notice.

Mr. WHITNEY, of Boylston. I hope that this amendment will not be adopted, because I see that it will open the whole question of pardoning and condemning criminals. I think the reasons last given are sufficient to show us that it does open this question. Here is a case where the decision of the executive was determined by facts coming from the officers of the law. This is one case; and may there not be a hundred cases where a man may lose his pardon from the same cause? As the gentleman for Erving has said, the chances are against the criminal; and after a man has had his trial they ought to leave him alone with the pardoning power, and not with the power of the law. Why should the law officers intervene to prevent a pardon, if, after consideration by the pardoning power, the executive should deem him worthy of a pardon? They have all the means of information that they ought to have, and therefore I am opposed to this amendment, because it opens up before the Convention the whole question again.

Mr. LORD, of Salem. I think, Mr. President, that there has really been sometimes in the Council-Chamber a misapprehension as to what the pardoning power is. I have been accustomed to believe that a pardon implied that the person pardoned had been guilty of some offence; that you cannot pardon an innocent man; and I think that all this discussion would have been avoided, and the true theory of a pardon would have been sustained, if we had made this provision, that no pardon should be granted upon the ground that the party suing for a pardon was wrongfully convicted, but that it should be the duty of the legislature to provide a remedy in all such cases by a judicial tribunal.

It seems to me that such a provision in the Constitution as that would cover the entire difficulty. The Government and Council represent the people just as much, and rather more than the district-attorneys do. They represent the public wholly upon this matter of pardon, and the district-attorneys have nothing to do with that, and have nothing to do with the question whether a person ought to be forgiven. If a person is to be pardoned, upon the ground that he is not guilty, then the district-attorney has something to say about it, and not otherwise.

Therefore, it seems to me, that if we leave the matter of clemency to the executive, who represents the people of the Commonwealth, we do well. If we provide that no pardon shall be granted on the ground of a wrongful conviction, we shall also do right, at the same time, to provide that the legislature should make a proper remedy for such cases.

Mr. KEYES, for Abington. I saw this amendment before it was offered, and I had one reason for not opposing it. The other day, when the subject was before the Convention, it did not seem to me that there was any substantial ground presented for any action in regard to the matter. Therefore, I then opposed even what I should consider a proper motion, on the ground that it might confirm a false opinion which was abroad in the community, viz.: that the Council were too lenient, and too loose in their action, and that they have been disposed to throw open the prison doors without reason. It was on that ground alone that I opposed the proposition then. Now, I do not want to keep up the opposition, because if carried too far, it might tend to confirm the opinion that the Council wished to hide their acts, and felt guilty, and were afraid of exposure. I do not believe that; there is no truth in it. As far as this can be adopted on proper principles and for proper purposes, I will not oppose it, because any assistance the Council can obtain from either side, is what they seek and desire, and such information they have never sought to avoid. I think the reasons of the gentleman from Salem (Mr. Lord) are pretty important. This matter of pardoning on the ground of a wrongful conviction of the court, is right, because the courts may make mistakes. Within the last twelve months, sentences have been passed by a judge of this Commonwealth, upon two convicts, one being sentenced to the State Prison for three or four years, and the other to the House of Correction for three or four months; whereupon the juries that tried those cases were so thunderstruck at the disproportion of the sentences to the nature of the crimes; and believing that the one sent to the State Prison should have gone to the House of Correction, and the one sent to the House of Correction, should have been sentenced to the State Prison, that they went to the judge, and told him if he did not reverse his sentences they would make a noise about it. He did so. I could not swear that this is so. I state it upon hearsay, and do not vouch for its accuracy; but have reason to believe the statement correct. From such a case we see the necessity of the pardoning power.

I rose simply to make this explanation. If the Convention deem it, under the circumstances, necessary to adopt this provision, from the fact that it introduces a system by which farther information can be gained, I do not see fit here publicly to oppose it, though I think it is perfectly unnecessary, as all the means necessary to find out the facts of each case are, under the present system, put in requisition.

Mr. TRAIN, of Framingham. Were I quite sure of the feeling of the Convention, in regard to this matter, I would not occupy one moment of its time. But, as I am not quite sure, and am a little afraid that the Convention may vote down the amendment, I hope I may be pardoned for making a few suggestions. If it were not a foregone conclusion, I should be happy to aid in lopping off and out of the Constitution, what I consider a useless portion of the government of the State, to wit: the Executive Council. But that has gone by, and therefore I will not trouble anybody with any views of mine upon that point. But I believe this to be a matter of importance, because, notwithstanding the arguments of my friend for Abington, (Mr. Keyes,) and those of other gentlemen who have addressed the Convention heretofore, I believe that the pardoning power has been exercised in a manner most prejudicial to the interest of the State. If gentlemen will look at the document which has been furnished us, upon the motion of my friend from Lowell, (Mr. Butler,) they will find that the number of pardons granted for the last ten years, averages nearly one for each week. Now, Sir, either the pardoning power has been exercised in a manner unbecoming and improper, or else the trial by jury is a mockery, and courts of justice a farce; because it cannot be true that it should be the duty of jurors to convict, and courts to sentence, and the duty of the Governor and Council to pardon, almost in the same breath. At this very term of the court of common pleas, in the county of Middlesex, I understand that they have tried five individuals, who have been tried and sentenced before, within the last three years, and who have been pardoned within that time, and come back again, to use the expressive language of another gentleman, for the lawyers to have another lick at.

Now, it is for the Commonwealth to protect the interests of society, by taking care of those who violate its laws, and, if you desire that the best influence should be exercised upon society, you should adopt two principles. In the first place it should be settled, that conviction shall certainly follow the commission of a crime, and, in the next place, that criminals should understand, that as certainly as they are convicted, they shall

serve out the time of their sentence. In this way you have an influence exerted over that portion of society which commit crimes; but, under the sickly sentimentality which some gentlemen in this Commonwealth cultivate, the man who commits a crime is a man of rather more importance than an honest man. These are general principles which ought to be laid down.

Nobody believes but that the Council and Governor undertake to exercise their powers in good faith, but the trouble has been that they have granted pardons in cases where notice has not been given to the court, and the prosecuting officers, who were familiar with all the circumstances of the case; that they have granted pardons upon hearsay testimony, without the formality of a trial, without the solemnity which is thrown around a judicial investigation, and have allowed their feelings to be wrought upon, until they believed the applicant had been wrongfully punished, or that he would be a better man, if discharged. We all desire to have the pardoning power preserved, but we desire to have it properly exercised. The amendment contemplates that when an application shall be made for the exercise of the pardoning power, the legislature, if it shall find it necessary, shall require the pardoning power to give notice to those who may be supposed to be better acquainted with the case, and from whom they can obtain more reliable information than they can possibly get from the friends of the criminal, or from any other source.

Let me say here, that I do not concur in the insinuations which have been thrown out here, upon the manner in which the judges of the courts perform their duties in passing sentences upon criminals. As far as I know, the courts have performed their duties faithfully, and have found no obstacle but what has been thrown in their way by the pardoning power. I know of no State in which the law is administered more faithfully and more justly than in Massachusetts. The reformatory power in the courts, is exercised more effectually and efficiently, and more regularly there than elsewhere. I hope the amendment will be adopted for the reasons I have suggested.

Mr. BRIGGS, of Pittsfield. I see no great objection to this amendment, though I do not see any necessity for it. If gentlemen apprehend so much danger to the Commonwealth from the exercise of the pardoning power, that some check should be placed upon it, I should think it well to confer that power upon the legislature, though not for the reasons alleged by my friend who has just set down. I do not concur in what seems to be his intimation, that while the duties of the courts are performed with a proper regard to the public interests, the duties of the Council-Chamber are not performed in that manner. I beg leave to express my opinion as to the performance of those duties, with one exception, to which it is not proper for me to refer. I do not believe it can be shown that during the whole history of this government, there has been any abuse of the pardoning power. I have no doubt that cases occur frequently, from the imperfection of human judgment and human affairs, in which the power has been exercised where it ought not to have been, but never under circumstances which tend to show that that branch of the government have had a disposition to, or that they have, infringed upon the duties of the courts, or interposed any obstacle to the carrying out the judgments of the judicial tribunals. There is no motive for such a course in this world. Why, in Heaven's name, should they do it? Who are those people who apply to them for pardon? They come without friends, and without money. They are poor and helpless. It has been already said that their cases are frequently brought before the executive by the officers of the prison. I wish gentlemen could see the records of the doings of the pardoning power, and read the history of the cases presented to them from time to time, and I think they would somewhat change their opinions upon this subject. But, says the gentleman, they follow up suddenly, and frequently annul the decisions of the court, and release convicts from their judgments. Yes, Sir, they do; but they never do it, when in their judgment there is not sufficient reason for interposing in that way. A few days since, I heard of a case which occurred in an adjoining county, and that is only one of many of a similar character, though not exactly like it. Some boys were arrested for petty offences, and sent to the House of Correction, and among those boys was one who was only eight years of age. He was tried and sent to the House of Correction without any notification to his parents. There the poor little fellow was, moaning and crying from morning till night, and wetting his pillow with his tears, because he had been taken from his parents and sent there. The case was brought before the Council, by the keeper of the House of Correction, and I understand the pardoning power interposed. What kind of a pardoning power would that be which would not interpose under such circumstances? It is in such cases as these, of sentence to the House of Correction, and in other cases where the time of sentence has nearly expired, or when the health of the prisoner is failing, that the pardoning power is most frequently exercised. It is, in

these latter cases, exceeding proper, that the criminal should have some little daylight break in upon his heart, giving him some reason to feel that there is one portion of the government of the Commonwealth which regards him with humanity and kindness, and which is willing to remit the few remaining days of his imprisonment. Who can tell how much influence such a course may have upon the convict who has been confined for months and years. They go out feeling that the government is not an incorrigible tyrant.

It will be found, on consulting the records, that there are many more cases where the courts and prosecuting officers are consulted, than gentlemen are aware of. The case mentioned by the gentleman for Berlin, (Mr. Boutwell,) is one of that kind. In looking over a few cases the other day, though with a different object in view, I found that about one-half of them were cases where the counsel was consulted. One of those cases was that of a man who was sentenced from the county of Franklin, to the State Prison for life. The report states that at the time of the conviction, the government attorney assured him that he would aid him if he behaved himself, and when an application for pardon was made by a number of citizens, the prosecuting attorney did interpose, with other citizens, in his favor.

As I said before, and repeat now, I do not believe that it can be found, in looking over the history of the Executive Council, that any abuse has existed in the exercise of this power. That there have been mistakes, I have no doubt at all.

The gentleman from Salem, (Mr. Lord,) has alluded to a class of cases, where persons have been wrongfully convicted. Now, by law, there is a limit to the time within which a person must apply for a new trial, and when that time has expired, there is no remedy for a person in prison under sentence. What should the executive do in such cases, when it is shown beyond reasonable doubt that the person has been wrongfully convicted, and the day for moving a new trial has passed by? It would be more than injustice for the executive to refuse to interfere. It would be inhuman!

Mr. LORD, of Salem. I ask the gentleman from Pittsfield to allow me to say, that a part of my suggestion was that the Governor and Council should not pardon upon the ground of erroneous conviction, but that the legislature should extend the time within which a new trial may be granted, in order to provide a remedy for such cases.

Mr. BRIGGS. I entirely concur in the gentleman's suggestion, but I submit, that until the legislature make provision for extending the time for granting a new trial, the Governor and Council should be allowed, technically, to pardon such persons. Until the legislature make that provision this will be the only remedy which can be exercised.

Mr. FRENCH, of Berkley. I hope I shall not be considered out of order if I remind the Convention that we are to adjourn to-morrow, for I believe we have voted to do so.

SEVERAL MEMBERS. O, no!

Mr. FRENCH. Then I am mistaken; but that was the Report of the Committee appointed upon that subject. But, Sir, if we are going to take up the time of the Convention in debating questions of minor importance—for the mover of this amendment himself says it is not a matter of much importance—I think we had better send home for our winter clothes, [a laugh,] for we shall not be likely to get through before winter.

Now, it seems to me that this pardoning power must be deposited with somebody—it must be left with some branch of the government, and I know of no better power to leave it with, than where it has been left heretofore. I think the Governor, with the advice of his Council, will be able to decide correctly upon all matters of pardon. I know it is the nature of man to be fallible, and that in some instances even with all the wisdom of the Council, the Governor may make mistakes.

But, Sir, I do not desire to discuss this question. I want that the question should be disposed of, in some way, without farther debate. I hope the amendment will be rejected.

[Cries of "Question!" "Question!"]

Mr. KEYES, for Abington, addressed the President, and was recognized.

Mr. ADAMS, of Lowell. I rise to a question of order. The gentleman for Abington has spoken two or three times upon this question, and upon that ground I claim the floor.

Mr. KEYES. I will yield the floor to the gentleman, with pleasure, if he desires to speak.

Mr. ADAMS. I have no wish to consume more of the time of the Convention upon this subject. I move the previous question.

Mr. KEYES. I was legitimately entitled to the floor, but having before spoken upon this subject, I yielded it, with great pleasure, to the gentleman from Lowell to speak, but not to move the previous question, and I do not understand that the gentleman, under the Rules, can take the floor from me for any such purpose.

The PRESIDENT. The delegate from Lowell, (Mr. Adams,) and the delegate for Abington, (Mr. Keyes,) rose simultaneously, but, inasmuch as the gentleman for Abington had tried two or three times to get the floor, the Chair awarded it

to him. The gentleman from Lowell then claimed the floor upon the ground that the gentleman for Abington had already spoken upon the subject under consideration. Supposing that the gentleman from Lowell wished to speak upon the question, the Chair, therefore, awarded the floor to him, upon that ground, as he was compelled to do under the Rules of the Convention, and the gentleman then moved the previous question. The Chair believes that is a correct statement of the case.

Mr. LORD, of Salem. Before the President decides, definitely, the question of order, I desire to call his attention to the 23d Rule, which is the following :—

"No person shall speak more than twice upon one question, without first obtaining leave of the Convention; nor more than once until other members who have not spoken, shall speak, if they desire it."

Under this Rule, any member who has once spoken, must yield to another, if he desires to speak, but I do not suppose he is obliged to yield to him to make a motion.

The PRESIDENT. The Chair will again state, that he supposed the delegate from Lowell had a right to claim the floor if he wished to speak, the gentleman for Abington having once spoken upon the question. He, therefore, awarded it to the gentleman from Lowell, supposing that he wished to address the Convention; he, however, is constrained, under the circumstances, to rule the motion made by that gentleman to be out of order.

Mr. KEYES. I wish to say only one word. I did not intend to have troubled the Convention again upon this subject. I was very anxious that this question should be disposed of without debate; and although this is a subject in which I have taken some interest, I have expressly avoided saying anything which should elicit debate.

But the gentleman from Framingham, (Mr. Train,) has seen fit to come out with one of the same sort of speeches which we have heard—not only upon a former occasion during the debate on this question, but which we have heard outside of this body—and such as I think, ought not to be made anywhere. I can see no reason why the gentleman should make such speeches, for I believe him personally to be one of the kindest hearted men in the Convention, and I can only account for it on the ground of the butcher business in which he has been engaged. I can think of nothing else which should prompt him to rise and make such speeches.

Sir, I undertake to say, that these prosecuting officers and judges, whose business it is to convict and sentence criminals, are not the proper men to be applied to for opinions in relation to the pardon of those convicts. Having once expressed their opinions as to the nature of their guilt, they have some pride in the matter. They do not like to have their decisions reversed. If he is a judge and has given his decision, upon a full knowledge of the circumstances connected with the trial, which has resulted in the incarceration of a man in prison, he is not willing to turn round and say that his sentence was too severe, and that the convict should be liberated. It is the nature of men to have faith in the cause they are obliged to maintain. An illustration may be found in a debating society, where a man taking the wrong side of a question for the sake of argument, defends and discusses it until he ends in believing that to be right, which, at the outset, he honestly believed to be wrong. And so it is with advocates who argue against what they know to be the plainest evidence; they argue themselves into the belief that what they are supporting is right.

Now, Sir, these very judges upon the bench, in charging the jury, generally argue the question in such a way as to indicate pretty clearly what their opinions are in relation to the guilt or innocence of the accused, and in nine instances out of ten, their opinions thus given, determine the verdict of the jury, when half the time any member of the jury is as good a judge of what is justice and equity as the judge himself. The idea that judges never make mistakes is a false one. You cannot go into any county court in the State, and examine the decisions through a single term without finding great mistakes committed. There is not much reason or common sense in many of their sentences, and that every-body knows. I do not mean to say that the judges mean to give wrong decisions, but any man who sits upon the bench feels differently at one time from what he does at others. I have suffered from dyspepsia long enough to know that sometimes a man may feel as if he would strangle half the world, if he could get them by the neck, [laughter,] and at others, as if he would shower blessings on the whole race. I believe the judges perform their duties conscientiously, and as well as they are able to, but they are not infallible.

But, as I said in the outset, it is no purpose of mine to oppose this amendment. If people think it is necessary, let them have it. But I cannot subscribe to requiring these men, who, if not hangmen, are only one remove from it, and who, by means of their profession, have acquired to some extent, the dispositions of butchers, to give their opinions upon the propriety of exercising the pardoning power.

Mr. BATES, of Plymouth, When the discussion first commenced upon this question, I was in favor of the amendment of the gentleman from Milton, (Mr. Churchill). But when I heard the argument of the gentleman from Framingham, (Mr. Train,) I was opposed to it, inasmuch as it put it upon the ground that the Council were a set of scoundrels who were unfit for, or incapable of taking care of the interests of the State, with regard to matters committed to them. But I am opposed to continuing this debate farther. It may be, if it were to continue, that arguments might be presented which would lead me to vote in favor of the amendment, and I therefore move the previous question.

Mr. UPTON, of Boston. I have an amendment which I desire to offer, and I also desire to occupy not more than two minutes in explaining it. If the gentleman will withdraw his motion for the previous question, I will renew it before I set down.

Mr. BATES. With that understanding, I withdraw my motion for the previous question.

Mr. UPTON. I move to strike out the second resolution as it now stands. It is the following:

*Resolved*, That it is expedient so to amend the Constitution as to provide that the record of the proceedings of the Council shall always be subject to public examination.

Now, Mr. President, one single word to explain my object in making that motion. These resolutions provide that your Council shall sit in judgment upon criminals—that is to say, the question of pardon is to come before them. They sit in public, but still the records of their proceedings, in every case, are to be made subject to public examination.

Now, Sir, in the case of an examination before a jury, of a criminal offence, if there is any difference of opinion among the jurors, where the person is not convicted, the opinions of those jurors who were in favor of conviction are never made public. Yet it is proposed to provide that the proceedings of the Council shall not only be open, but that the record of their proceedings shall be kept open for public examination, so that, if their is a difference of opinion among the the councillors upon a question of pardon, any one, from a personal or other motive, can go to your Council-Chamber, and ascertain how each councillor voted. Now, Sir, that is contrary to the principles and spirit of our institutions. You open the door for any person entertaining feelings of hostility towards any particular councillor, to carry them into effect, by ascertaining from the record what were his votes in relation to applications for pardon, and using those votes to secure his own private ends. You open the door for revenge, if you please. Why should the opinions of jurors, as to the criminality of a person upon whom they are called to decide, be kept from the public, and the opinions of a councillor, who is called upon to decide the same question, upon an application for pardon, be made public?

I hope the resolution will be stricken out; and now, in accordance with my promise, I move the previous question.

The previous question was seconded, and the main question ordered to be put.

Mr. BRIGGS, of Pittsfield. I do not wish to say one word upon the question before the Convention; but, having heard that I made an erroneous statement in relation to one of the unfortunate young men to whom I alluded when I was before up, I wish, in justice to his friends, to correct the statement.

The PRESIDENT. The previous question having been ordered, the gentleman from Pittsfield can only proceed by unanimous consent.

There was no objection made, and

Mr. BRIGGS proceeded. I alluded to a young man by the name of Learned, in Worcester County, who, upon the recommendation of many of the citizens of that county, was pardoned; and I stated that he turned out to be unworthy, and that he had since been tried and convicted for another offence in the State of New York.

Since making that statement, a gentleman tells me he has learned that the young man has, within a few days past, died in the State Prison in the State of New York, but that before he died, satisfactory evidence was produced, to show that he was wrongfully convicted; that the governor of New York was satisfied of that fact, and sent him a pardon; but that that pardon reached the prison-house two hours too late; and that in his dying moments the poor fellow protested his innocence of the offence for which he was convicted.

Sir, that young man may have a mother, he may have a sister, or some friend, who may see in print, or in some other way learn, what I said in relation to his case. I desire, therefore, to take it all back, for of all things, I would not do injustice to any human being placed in such a situation, or wound the feelings of his friends. I understand that the evidence was satisfactory that he was wrongfully convicted.

The question was then taken on Mr. Churchill's amendment, and there were—ayes, 135; noes, 115.

So the amendment was adopted.

The question then recurring upon the motion

of Mr. Upton, of Boston, to strike out the second resolution, it was taken, and the motion was not agreed to—ayes, 97; noes, 164.

The PRESIDENT. The question now is upon ordering the resolves, as amended, to their final passage.

Mr. HALLETT, for Wilbraham. I move a reconsideration of the vote whereby the previous question was ordered. I desire to say one word as a reason for so doing.

Mr. EDWARDS, of Southampton. I rise to a point order. I would inquire of the Chair if it is in order to move a reconsideration of the previous question after we have proceeded under the operation of that previous question and taken votes?

Mr. HALLETT. I withdraw my motion.

Mr. GRISWOLD, for Erving. There is one vote taken here with which I am dissatisfied, and I will venture to move a reconsideration of the vote by which the amendment of the gentleman from Milton (Mr. Churchill) was adopted.

Mr. SCHOULER, of Boston. I rise to a question of order. My point of order is that there cannot be a reconsideration now, after the previous question is ordered.

The PRESIDENT. The Chair is of the opinion that the motion to reconsider is not in order; that no motion to amend or reconsider can be in order, the main question having been ordered.

Mr. SCHOULER. The gentleman can move a reconsideration after we have got through with the resolves.

The PRESIDENT. The question now is upon ordering the resolutions to their final passage.

Mr. GRISWOLD. I had supposed that the motion I made was in order; but as it has been ruled out of order, I call for a division of the question.

The first resolve was then read, as follows:—

*Resolved*, That eight councillors be elected by by the people in single districts, each district to consist of five contiguous senatorial districts.

The question was taken, and the resolution was agreed to.

The second resolution was read, as follows:—

*Resolved*, That it is expedient so to amend the Constitution as to provide that the record of the proceedings of the Council shall always be subject to public examination.

The question was taken, and the resolve was agreed to.

The third resolution was read, as follows:—

*Resolved*, That it is expedient so to amend the Constitution as to provide that no councillor, during the time for which he shall be elected, shall be appointed on any commission, or to any place, for which he shall receive any compensation whatever, other than that which he receives as councillor.

The question was taken, and it was agreed to.

The fourth resolution was read, as follows:—

*Resolved*, That the legislature may provide by law that public notice shall be given of all applications to the Governor and Council for remission of the sentence of persons imprisoned for crime.

The question was taken, and a division being called for, there were—ayes, 129; noes, 135.

So the resolution was not agreed to.

Mr. HALLETT, for Wilbraham. I rise for the purpose of moving a reconsideration of the vote just passed.

The PRESIDENT. The motion will go into the Orders of the Day for to-morrow.

Mr. BOUTWELL, for Berlin. I rise to a question of order. I wish to know whether the motion can be made at this time?

The PRESIDENT. The motion cannot be made except by general consent, unless the Orders of the Day be first laid upon the table.

Mr. BOUTWELL objected.

Mr. HALLETT moved that the Orders of the Day lie upon the table.

The question was taken, and the motion was not agreed to.

*Preservation of the Records.*

The PRESIDENT. The next matter in the Orders of the Day is No. 6 in the calendar, being the resolves on the subject of the preservation of the records. The question pending is upon their final passage.

The resolves were read, as follows:—

*Resolved*, That, at the close of the session, the Secretaries of the Convention deposit the original journals, together with the papers of the Convention, in the office of the Secretary of State.

*Resolved*, That William S. Robinson prepare an index to the journal, and procure two thousand copies of the journal and index to be printed and bound, on such terms and in such manner as shall be approved by the Committee on the Preservation of the Records, and that he be paid four dollars a day for his services therein.

*Resolved*, That his Excellency the Governor be requested to draw his warrant on the treasury for such expenses incurred in the execution of the preceding resolves, as shall be approved by the Committee on the Preservation of the Records.

*Resolved*, That the Secretary of the Commonwealth be requested to distribute copies of the journal to each member of the Convention, and

to all persons and public bodies mentioned in chap. 2, sec. 2, of the Revised Statutes, excepting members of the legislature.

The PRESIDENT. The question is upon ordering the resolves to their final passage.

Mr. BRIGGS, of Pittsfield, I wish to make an inquiry in regard to this matter. I am informed that the mode of doing this business in the House of Representatives is to pay a certain sum, say one hundred or one hundred and fifty dollars, for the work. If that has been the practice heretofore, I wish to inquire what reason there was for departing from it in this case? I merely ask for information.

Mr. BIRD, of Walpole. The Committee understood that the practice had been to pay four dollars per day for services of this kind rendered by the clerk; but I have been informed by gentlemen here that the practice has been to pay a round sum, one hundred or one hundred and fifty dollars, as the case might be.

Mr. BRIGGS. I have no choice about it. I merely wanted the information.

The question was taken on the resolutions as reported by the Committee, and they were agreed to.

*Elections by Plurality.*

The PRESIDENT. The matter next in order is No. 7 upon the calendar, being the resolutions upon the subject of elections by plurality and majority. The question pending is upon their final passage.

The resolutions were read, as follows:—

*Resolved*, That it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary to the election of a governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general of the Commonwealth: *provided*, that if at any election of either of the above-named officers, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be governor.

*Resolved*, That in all the elections of senators and councillors, the person having the highest number of votes shall be elected.

*Resolved*, That in the election of representatives to the general court a majority of all the votes given in shall be necessary to the election at the first ballot: *provided*, that in case of a failure of election on such ballot, the person having the highest number of votes at the second or any subsequent ballot, shall be elected.

Mr. HOOPER, of Fall River. I move the previous question.

Mr. DANA, for Manchester. I hope the previous question will not be sustained, for I have an amendment which I desire to propose.

Mr. SCHOULER, of Boston. I hope the previous question will not be pressed, because I shall feel myself under obligation to move a reconsideration, and I do not think we shall gain any time by such a motion. I do not intend to discuss this matter, but I intend to move the same amendment which I offered the other day. The gentleman for Manchester has also expressed a desire to move an amendment. I do not know what it is, but I think that opportunity should be afforded to any gentleman to move amendments. I can assure the gentleman from Fall River, (Mr. Hooper,) that I do not intend to occupy any time, but merely to offer my amendment. If the previous question should be sustained, and no opportunity given to offer amendments, I shall move a reconsideration. I call for the yeas and nays upon the previous question.

The yeas and nays were ordered.

Mr. HOOPER, of Fall River. I will withdraw the motion for the previous question.

Mr. DANA, for Manchester. I propose to amend the resolves by striking out all after the word "that," in the first resolve, and inserting the following:—

That in the election of all officers required by this Constitution to be elected by the people, except town officers and representatives to the general court, the person having the highest number of votes shall be deemed elected. In the election of town officers and representatives to the general court, a majority of votes shall be required, unless otherwise provided by the legislature.

I wish to take a few moments of the time of the Convention to suggest a reason or two in favor of this amendment. I said, day before yesterday, when the subject of the judiciary was up, that I hoped that whatever had been settled by a test vote would be treated as settled; and that I would not bring forward any amendment on the subject of the plurality, if the amendment on the subject of the judiciary could also be dropped; but as that subject was reopened, I feel myself at liberty to bring forward this amendment.

The Convention will allow me to suggest to them the state of this question now. The officers whom the people elect will be divided into three classes: first, those chosen by towns, including representatives. Now, are we not pretty much all agreed, as the votes show, that they shall be chosen still by majorities, and at the same time, that the hands of the legislature shall not be tied, so that if towns think it expedient to have the right

to vote by plurality, they may do it. Now the objection to the Report of the Committee is, that it ties the hands of the towns. They cannot vote on the plurality principle on the first trial, if they wish to, without amending the Constitution. My amendment is this: that in the town meetings they shall vote upon the majority rule, but that the legislature may, when they desire it, untie their hands and allow them to vote by the plurality rule. That is the first class of cases; and the reason why I think it expedient that towns should vote by the majority rule is, that they are deliberative assemblies, and can vote as many times in a day as they please, or adjourn. I suppose that we pretty much agree that it is best to leave them to the majority principle, with power in the legislature to alter it.

With regard to the second class of cases, we are all agreed, as the votes show; that is, in the county and district elections, including councillors and senators, the plurality rule ought to prevail. My amendment, and the Report of the Committee, therefore, coincide in that respect. Then, Mr. President, is it not true that, after all, there is but one point of disagreement here? Notwithstanding all the discussion we have had, when we come to get at the bottom of the matter, is it not true that there is but one point of disagreement here? And that point of disagreement is far less, too, I apprehend, than gentlemen suppose; because, on that point—that is, relating to the election of governor, lieutenant-governor, and other general officers—the majority principle is abandoned. Yes, Sir, the majority principle is abandoned. There is no difference, on that point, between the friends of the majority principle and the friends of the plurality principle; because it is agreed, on all hands, that there shall not be a second trial. Is not that so? Is it not agreed here, by the friends of the majority, as well as by the friends of the plurality, that there shall be no second trial for these officers? If there is no second trial, then the majority principle is abandoned. The only question, then, is, whether, in case there is no majority, we shall take the plurality rule, or leave it to the legislature. If I am not right in that statement, I would like to have some gentleman say why I am not right. The votes have shown that we do not intend to have a second trial anywhere but in towns. No second trial for the State officers, no second trial for the councillors, no second trial for the senators, or for any of the county or district officers.

Well, if there is no second trial, the majority principle is abandoned; and all the discussion on the subject of majority and plurality is entirely irrelevant. Then the real question is, whether, in case you have no second trial, and there is no majority to elect the general officers, the election should be by the legislature or by the plurality rule. I take it that the plurality principle is nearer the majority principle than the vote of the legislature can be. I would ask the friends of the majority principle to look at the position which they assume, when they sustain that Report. In case they sustain the majority principle, and there is no election by the people, they leave it for the House of Representatives to choose two out of the three highest, and that House of Representatives is not based upon numbers. Is there any majority principle in that? The House of Representatives is not based upon numbers, and yet a friend of the majority principle leaves it to the House of Representatives to select two out of three, and then he is to be chosen by the Senate. And how is the Senate chosen? Not by a majority but by a plurality. Now, where are the friends of the majority principle on that Report? If there is not a choice at the first trial, they will not allow a second trial; and they then leave it to the House of Representatives to select two, that House of Representatives not being based upon numbers. They then leave it to the Senate to make the final choice, the Senate being based on a plurality. That throws out the majority principle entirely.

The real question, then, is not between a majority and plurality, but between a majority and the legislature, if you cannot get the majority. That is the real question; and I say if you cannot get the majority, take the plurality. That is the most democratic, the most republican, and comes nearest to the majority principle.

The objections to trying the question in the legislature are numerous. The legislature ought not to be elected with reference to choosing a governor, but for a very different purpose. In choosing a governor on this floor, we are liable to the influence of the arrangements made in committee rooms, of coalitions formed here which are not so desirable nor so dignified as those formed at the polls. If we are to have them I would rather have them formed at the polls than in the committee rooms.

That is all I propose to say on the main question. I think it raises the issue fairly.

I wish to say one word in reply to the gentleman for Abington, who did me the honor to pay me a higher compliment on this subject than any he had paid me before—and I am indebted to him for two or three compliments—for all of which I am really obliged to him, because they had the evidence of being sincere, as everything has which comes from him. But this compliment exceeded them all. He said that I purposed

to revive the dead Whig party. I did not know that he attributed to me the power of working miracles before; but it is quite true, that with the countenance of the gentlemen for Berlin, (Mr. Boutwell,) the gentleman from Springfield, (Mr. Beach,) and the gentleman from Lowell, (Mr. Butler,) the gentleman for Otis, (Mr. Sumner,) the gentleman from Charlestown, (Mr. Frothingham,) and some others, I did try to revive the Whig party, if the plurality will revive it. I wish that when a majority cannot be obtained, and we cannot have a second trial, to say that the people shall elect by a plurality.

It has been said by some Whig gentlemen, that the purpose of that first resolution is to enable certain parties to govern the State; and by other gentlemen—the gentleman for Abington among others—that those who favor the plurality principle, do it to enable another party to govern the State. Now, I wish to put the question to my Democratic friends whether they have so little faith in their principles, so little confidence in their star, as to sit down in despondency, in the belief that the Whig party is always to be the popular party in this Commonwealth; whether, with a popular New England man president, who had a majority of the voters of Boston in his favor, with the prestige of almost unbroken success on their side throughout the Union, they will sit down in despondency in the belief that the Whig party is always to be in the ascendant here? I wish to put the question to the gentleman for Abington, who is a member of an "unhealthy organization,"—and better be unhealthy than be dead, for while there is life there is hope, —whether the party to which we belong has so little faith in its principles as to believe that we are never to prevail; whether, with principles which both the other parties have recognized as true, within ten years; and with principles which almost all the leading public men in this State have recognized within ten years, at some time or other, to be true; whether, with principles in support of which he can point to resolutions passed unanimously, or nearly unanimously, by the legislature of this State, within ten years; he will sit down in despondency, and make his legislation in the belief that his party will never be the dominant party? I would ask him whether the necessity of having more votes than both the great national parties together, has not been a discouraging fact in our history? Whether it has not operated so, and whether, under the plurality rule, it would not operate otherwise?

But, I ask pardon of the Convention for suggesting any considerations like these. I do it in reply—and I wish the Convention to bear me witness that I do it in reply—to charges made, that gentlemen are governed by party motives. I wish to show that those motives are too unsound for any to be governed by. No man can tell who will be in the plurality here next November, and certainly not, a year from next November; because as the parties are now constituted, it is hard to say what a day, and much more what a year, will bring forth; and in settling these great constitutional questions we are not far-seeing enough, and I trust we are too honest, to be governed by speculations upon the future state of parties. I believe the plurality principle is a political necessity. I think the resolve of this Committee shows it to be so; for this Committee have abandoned the majority principle, let me say it again, in everything but the towns; and the only question now, is between the legislature and the people. That is the only question; and it seems to me, that in a question like that, the principle is clear; and, as for party success, we must trust to Providence for that.

Mr. KEYES, for Abington. The gentleman for Manchester, says I have paid him two or three compliments. If I have, certainly they were given in sincerity. I do not know but I ought to balance the account, and say something on the other side. At any rate, after the long contest had the other day, when there was a full house; when we talked about ending debate on this subject; when we took it up, item by item, and discussed it thoroughly and understood every part of it, and voted in detail on the whole of it; I supposed that ended the whole matter, if anything ever can end a matter in this House. Unless there is a limit somewhere, how shall we know when we are beaten, and when victorious; where is to be the end? It has been said of some of our brave and popular generals that they never knew when they were beaten; and it seems the gentleman for Manchester is in the same category, after the contest the other day, when we made a fair fight and the Report was victorious; that ought to have been the end of the debate. If, therefore, anybody under the circumstances should be permitted to introduce amendments, it should not be the enemies, but the friends of the Report. I have no sympathy with persons who attempt to amend and prepare for the people articles which they utterly oppose from beginning to end, and which they mean to oppose forever. That is not the way; it is not natural that they should care anything about the condition of this bantling, only to try to have it go forth in the most monstrous shape that it can.

Now, Sir, the gentleman for Manchester is the last whom I should suspect of improper

motives; and I have no wish to arraign the motives of anybody, for we cannot see the heart; but it is a little strange that he should be so anxious for the adoption of a system so utterly opposed to all the sentiments of his whole life—a system which, if it should prevail, would break down the old landmarks of the Constitution and utterly revolutionize the government. Sir, if this policy should be adopted, it would be absurd to call this a republican government—there is no such definition of the word in any of the dictionaries, Latin, Greek, French, or Sanscrit. I trust that if this Convention has arrived at the period when it can justify itself in limiting speeches to fifteen minutes, it can assume authority in other respects. Although originally opposed to the previous question, still, I regard this as a matter which has been fully discussed and settled by the Convention; and the only attempts which are now made to make a change, are by its bitterest enemies in all respects; and, therefore, I think the time has now come to put the screws on.

Mr. DANA. If the gentleman will allow me, I would like to ask him one question. He says that if we adopt the plurality rule instead of the majority rule, there is no republicanism. I want to ask him what remains of the majority rule in that Report?

Mr. KEYES. I am perfectly content to say, nothing remains; but then, if he thinks that this is all plurality, why does he not vote for it? If it is all plurality, what more does he want? These plurality men are not satisfied with that; but if his argument is good for anything, they are entirely unjustifiable in making any objection to it at all. It is said that we have surrendered nothing to that side; but, Sir, it seems to the gentleman for Manchester, that we have surrendered the whole. I am glad that he has reminded me of that point, for I had nearly forgotten it, although I took a note of it at the time. Mr. President, we have surrendered almost everything, and yet they are not satisfied unless they get more than the lion's share, Now, I ask him again, if this is a good plurality system, why is he not satisfied with it? What does he want more? What he seems to desire is a mere formality, and he ought to be willing to submit to a fair compromise, for the harmony of the Convention, which is almost equally divided on the subject. Now, I am strongly in favor of the majority system; and, Sir, we have the gentleman's own arguments in reference to all other subjects, in its favor; the history and experience of this country is in its favor; the history of every country that is not disgraced and dishonored, is in its favor. Sir, if I know anything about politics, I know that the effect of the plurality system is to degrade, to demoralize, and dishonor any people, or any government, where it is adopted. I say that this change which is proposed, is one of the most radical character; and it was so considered by the united Whig party two years ago; and their change, in this respect, has neither been by reason, or common sense, or justice. It has been for a purpose—I do not charge anybody with improper motives, or with any motives at all—as I said before, I do not profess to look at the heart; the motives may have been good, or they may have been bad; I do not care what they were, I only look at the surface of things; but I know, and every man here knows, that there are Democrats in Massachusetts who have done nothing else but work in aid of the Whig party; they want to keep the Democratic party conveniently small, so that they, and their friends may absorb all the spoils which fall to the State. But men who call themselves Democrats, vote upon the other side; that particular class of men to which he alluded, and some of whom he pointed out, are, at heart, in favor of this, and yet have voted all the time in aid of the Whig party. Now, I do not wish to act in such company, however distinguished the men may be. I do not suppose that any gentleman can find himself in such company on the ground of reason, or common sense, or conscience. I beg to be understood that I charge no improper motives upon any one upon this floor; but the grand argument which I would now impress upon the minds of this Convention is, that this thing has been discussed over and over again, and it is time that the discussion was brought to a close. I hope, therefore, that we shall take up the items one by one, and if it be possible to gain a victory upon this Report, that we shall stand by it under all circumstances.

Mr. BIRD, of Walpole. Mr. President: I move to amend the Report by striking out the third resolution, and substituting in lieu thereof the following:—

*Resolved*, That it is expedient so to amend the Constitution as to provide that a majority of the votes shall be necessary for the election of representatives to the general court, until otherwise provided by law.

I offer this amendment, Mr. President, principally because something of the kind is necessary, in order to make this proposition at all of the character of a compromise. A great deal has been said about compromise in this resolution; for one, I must say, in relation to that, that I do not see much of a compromise in it; and I never could give my support to such a resolution as this upon the ground that it was a compromise.

I do not know as anybody has told us, in the course of this debate, what the compromise consisted in. It has been intimated, that it was a compromise which was concocted in an eating-house, or that some arrangements was made there which foreshadowed the final result here. All that I have to say in relation to that matter, is, that I know of no such arrangements, and, least of all, in connection with this matter. The charge, that the order of business here is the result of caucus arrangements, is far from complimentary to the majority; for, if such arrangements are made, nobody adheres to them.

I do not regard these resolutions as being any compromise at all, as they give absolutely nothing to the friends of the majority system. They provide that the governor and other State officers shall be chosen by a majority at the first ballot; but that if there is not a majority at this popular election, then they are to be chosen by the legislature. In the present state of parties in this State, these six State officers will not be chosen by a majority of the popular vote at the first election. This gives us nothing at all; because then the election is given to the legislature. The county and district officers are all to be elected by a plurality; and the representatives to the general court are to be chosen by a majority at the first trial, and the plurality system at the second; and this is what they call a concession to the friends of the majority system! Sir, it is no concession at all. Every-body knows that it is a fact, that the election of representatives in a majority of towns, is not ordinarily made at the first ballot. I do not say that it is not made on the first day, but not at the first ballot. Now as a party man, if I am going to have the plurality system at all, I want to have it at the first ballot rather than the second. I do not want any second trial by plurality for representatives to the general court.

But I do not look at this matter in a party light at all. I want to establish in our Constitution, some sort of recognition of the majority principle; and, unless we adopt the amendment which I have proposed, I think we shall not have it. Although I should prefer, personally, that the majority rule should apply to a larger number of officers than even this amendment will include, still I am willing to go with our friends who are in favor of the plurality rule, as a matter of compromise. I ask nothing unreasonable in this compromise; but simply that you will give us a chance to elect our representatives to the general court by the majority system; and, if afterwards, the people, through the legislature, shall decide that it is better to apply the plurality rule to the election of representatives, I will be willing then to yield, and give that up too. I say that this is what I consider a fair compromise. We give you all the State officers, councillors, senators, judges of probate, county commissioners and commissioners of insolvency, and all county and district officers; and, all that we ask, is simply the concession that we may retain the majority system for the election of representatives to the general court.

I should have been glad to have adopted the rule indicated by my friend from Melrose, (Mr. Gooch,) the other day; and that is, that in the election of the law-making power, a majority vote should be required in all cases; but, in the election of administrative officers, who were not to make laws, but merely to administer them, the plurality system should be adopted. I considered that as a very good rule, and a fair compromise, that the governor, lieutenant-governor, senators, and representatives—for I do not care much which rule you apply to the secretary, treasurer, auditor, and attorney-general, whether they are chosen by plurality or not—should have been chosen by the majority system; but I am willing to concede even more than that. I am not willing, however, to go farther than the amendment which I have now submitted, indicates. Until the people shall decide that the plurality rule shall be adopted, I am unwilling to yield the majority principle. I want to hold on to that, to the extent that we shall at least have one branch of the legislature—one branch of the law-making power, which is to choose the governor under certain circumstances—elected by the majority principle.

But I will not go into this matter at length. If gentlemen are not disposed to yield us this one point—of applying the majority principle to our representatives—I do not suppose they can be argued into it by anything which I can say. I will add, however, that if we cannot secure this recognition of the majority principle in the Constitution on this one point, rather than to go for the Report as it stands now, I would go for the plurality rule clean through from top to bottom. Rather than accept the proposition of the gentleman for Manchester, I would give up entirely, and let the plurality principle be applied to everything. This amendment, which I have offered, is submitted in a spirit of compromise, and I am willing to go more than half way for the sake of harmony; but, if we cannot agree upon a fair compromise, in God's name let us at least have a principle, or something that looks like a uniform rule, to stand upon.

Mr. GOOCH, of Melrose. I wish to submit an amendment to the amendment proposed by the gentleman from Walpole; and with the addi-

tion which I propose, I shall be in favor of his amendment. I move to add, at the end of the amendment, the following proviso:—

*Provided*, that no law on this subject shall take effect until two years after its passage.

Mr. DENTON, of Chelsea. I rise to a question of order. I will inquire if the gentleman for Manchester did not propose an amendment to the resolution, and if the gentleman from Walpole did not propose an amendment to his amendment?

The PRESIDENT. The Chair will state, for the information of the gentleman, the position of the question. The delegate for Manchester moves to amend by striking out the resolution and inserting another resolution. The delegate from Walpole moves to amend the part to be stricken out, which takes precedence of the motion to strike out. The vote must first be taken on the amendment proposed by the delegate from Walpole, to amend the part which it is proposed to strike out; and the delegate from Melrose moves to amend that amendment, which is in order.

Mr. GOOCH. The reason why I propose the amendment which I have submitted, is this: I think, that by the adoption of the amendment proposed by the gentleman from Walpole, together with my amendment, the matter will be placed where it ought to be, in the hands of the people. It will be placed so that the people shall have control over it. No one legislature can have entire control over the matter, but it will be put in a position so that if one legislature sees fit to change the present rule to the plurality rule, and the people see fit to ratify that action, it can be done; and otherwise it cannot be done. I am willing to leave the matter in this position. If the people desire that the majority principle may be continued for the election of their representatives, then, Sir, with this provision, they have power to accomplish their object whenever they choose to do so. If they send to the legislature men who pass a law making a change to the plurality system, and if that measure is not repealed by the subsequent legislature, then it goes into effect as a law of the Commonwealth, and the plurality rule is established. It takes it out of the hands of any political party, and places in the hands of the people; because, if the legislature pass a law changing the majority rule, then, Sir, the people, if they do not approve of the change, can send men to the next legislature who will repeal the law making the change. If the two amendments are adopted, it requires two years to carry the law into effect, and another legislature must intervene before it can take effect. Then, Sir, if a change takes place, it obtains the sanction, not of one legislature merely, but of two successive legislatures; and the sanction also of the people, because the members of the second legislature will be chosen, knowing that the matter might be altered or changed by the subsequent legislature; and of course, if the people are opposed to it, they will elect members to the legislature who will put the matter right, and leave it in such a shape as the people desire to have it stand. I hope the amendment which is presented by the gentleman from Walpole, and the amendment which I have moved to that amendment, may both be adopted.

Mr. HOOPER, of Fall River. I moved the previous question, in the outset, in the hope that this Report, as presented here, would satisfy all parties. It is manifest that there is a difference of opinion among those who generally act together in this Convention, and it is necessary that something should be conceded on both sides. I am in favor of the plurality system throughout. I have been so from the beginning, and I am so still; but I find other gentlemen are opposed to it. There are certain instances in which I am desirous of having it applied more than in others, because the convenience and the wishes of my constituents require it. Now, Sir, I am willing to give up something, a part, to obtain the remainder—I am willing to give up what the Report has given up—the election of those officers who are to be elected by the whole people at large. And I can the more readily concede this, because the principle is in accordance with the one which has been suggested by the gentleman for Manchester, (Mr. Dana,) and other gentlemen here—that the legislature, or those persons who are to be elected by the people at large, can exercise those delegated powers as well as, and perhaps better, if their doctrine is true, than the people themselves. He goes for having the governor, who is elected by the people at large, appoint the judges. Others contend that this is an election by the people. Now, if this be so, why is it not as well for the legislature, elected by the people of the State, to elect those officers named in the Report, to be elected by them in a certain contingency? It is a business they have been accustomed to do in part, that is, to elect a secretary, treasurer, and auditor, and a governor and lieutenant-governor, frequently. Now, I am willing to let the whole matter rest where the Report of the Committee leaves it, and sustain that Report, as the only safe ground on which we can stand, under existing circumstances.

But it is proposed, on the other hand, to change the election of representatives and town officers.

That is a point, of all others, which I wish to retain. It is the one in which my constituents feel the most interest. There I wish to have the plurality system applied. I should prefer to have it in the first instance; but I am willing to concede something even there.

Now, this Report is the Report of a Committee which was appointed expressly with the view of making a compromise report upon this matter. Gentlemen will recollect that one Report that was brought in, recommended the plurality system throughout. That Report was in part accepted, and in part rejected. A Committee was appointed to draw up a report incorporating the different views which had been expressed. They—the Committee—supposed they had done this; and now I hope that gentlemen will stand upon the Report as it is. I am willing to stand upon it, for one; but if this amendment is adopted, I shall be constrained to vote against that Report as a whole. Let it therefore stand as it is, and I will go for it. I think it is the only safe ground we can take.

Mr. HURLBUT, of Sudbury. Mr. President: On a former occasion, I expressed my views upon this subject. Then, I attempted to show that the majority principle was the only true one. My convictions are the same to-day. Sir, I am not prepared to stand upon this Report, and for this reason: we are called upon to compromise; and what does that imply? Why, that two or more parties disagree, and that each shall surrender something. When this question was under discussion before, so nearly were the Convention balanced between plurality and majority, that neither party were willing to press the matter. For this reason, it was, Sir, that a new Committee was appointed, with the understanding that a different proposition should be submitted, recognizing the two principles; not that one should lose all, and the other gain everything; but that each should yield to the other—that there should be mutual concession. And now, Sir, what have they presented us? A plan by which plurality must elect every department of the government. I submit, Sir, that there is no feature of compromise in the whole bill. There is running through each resolve the cry of "give, give." Sir, I am prepared to yield one-half, yes, more than that, much more, if need be; but I cannot surrender everything; and I would much prefer to remain silent in my seat, did I not believe gentlemen to be deceived in this matter. I apprehend, Sir, that the third resolve has quieted the fears of gentlemen; that they do not fully understand its operation. It is for this reason, that I rise, to save, if possible, the principle of elections by majority from complete and perpetual ruin.

Sir, let us examine the several resolutions in their order. The first proposes that the governor and lieutenant-governor shall be elected by majority; but, Sir, who does not know that we are to have but one trial, and in case there is no choice of State officers, provision has been made to elect them on this floor. And who does not know, too, that the people have failed to elect such officers in years past, and in all probability will fail to do so in years to come? Have the friends of the majority principle anything to expect, then, from such an arrangement? Certainly not. It must then depend upon the manner of choosing representatives whether your State officers are elected by majority or plurality. And how is it in regard to county officers? Why, we accede to the opposition the right to elect on the first ballot, and by plurality. Now, then, we come to town representation, and how, I ask, do the Committee propose to elect? By plurality, most clearly—and I appeal to every honest gentleman present, if it be not so? True, they say we may elect by majority, if we *can*, on the *first* ballot. Sir, the first ballot is only the bringing forward of candidates; and frequently, perhaps I may say generally, gentlemen who are to lead off in the several parties are not named till declared by the chair. Then for a second trial, and *that* is to decide. The party then which happen to have a plurality of voters present, though it be a small minority in the city or town, *must be* triumphant. Are gentlemen prepared for this? I trust not. Let us not be deceived. If gentlemen intend to go for plurality, let it be done fairly, openly, manfully. I can understand how gentlemen may vote on that principle. I can understand how they may vote for majority, too, and I can see with what propriety both parties may meet on a common platform of compromise; but, Sir, I do not understand why we should adopt these resolutions, which acknowledge neither plurality or majority, and are wanting in every important particular of a fair and honest compromise.

Sir, the Report is without principle. I want a compromise, or else I want to vote upon principle, and only upon principle. I am prepared to vote for the amendment of the gentleman from Walpole, because we surrender everything but town majorities, and if we can secure that to our towns, we have a compromise; not such as in my humble judgment we had a right to expect, but the best we shall be likely to obtain, at this late stage of the bill. Should that amendment fail, then I will vote for that of the gentleman for Manchester, which, in my judgment, is preferable

to the resolutions on your table; and should that fail, then, Sir, I shall go for the majority principle entire. It seems clear to my mind, that if we fail to sustain the first amendment, all is lost. Yes, Sir, everything. Not a vestige of principle remains; there is not a single piece of broken plank in the old ship big enough to place your foot upon.

Sir, I know not how others may act; but for myself, I see only one course to pursue, and that is the straight course. I do not say that I will have the whole, or nothing. No, Sir. But I do demand something. No gentleman has attempted to overthrow the great majority principle only on grounds of expediency. Sir, what weight ought such arguments to have? It might be expedient to establish a despotic government, for ought they show to the contrary. Certainly, it would be more convenient oftentimes; not half the machinery would be necessary to carry it on. And for such a reason are gentlemen ready to make the exchange? "Trust it not, Sir, 'twill prove a snare to your feet." In the hands of the people—the majority of the people—our institutions are safe; place them wherever else you please, and they are in danger.

Mr. STETSON, of Braintree. I regret that I feel it my duty to address the Convention again upon this question. I do not now propose to argue the question, because the Convention are tired of it. I suppose, that in the long and able arguments that have been made upon this bill, beginning about the 20th day of May last, and occupying the attention of the Convention at that time for nearly five days, and then upon taking the question the majority being nearly balanced by the minority, that we would have definitely settled it before this. What I mean by the majority is this: that upon certain questions, there is a bare majority, and upon others, a majority one way at one time, and another way at another time, a vacillating sort of majority, with which the Convention is not satisfied, and of which, Sir, I venture to say, that the records of no Convention which ever yet met together upon this continent, will show the like, as the votes will show during the last days of that discussion. Now, Sir, we have spent two or three days more in discussing this matter, as reported by this new Committee. It was given out by the leaders of this Convention, that a Report was to be brought in which would be acceptable to all. Well, Sir, after several weeks' delay, this bill was brought in, and was but very faintly advocated by the chairman of the Committee. Its provisions, and its excellencies, were left to be developed by other means than those at the disposal of the chairman of the Committee.

Now, Sir, I will ask, if the time which has been spent in this session of the Convention, is to be charged upon a majority of its members? I believe, as one of the progressives, that the blame of some little portion of the delay rests upon myself. But, Sir, the leaders of this Convention have declared, from time to time, upon this floor, that they were not strenuous about carrying anything which the people did not seem to desire; that they would not be strenuous in maintaining any measures, if they could be carried without their assistance. The gentleman from Lowell, (Mr. Butler,) the other day, said he had no desire to be pertinacious in regard to obtaining measures to suit himself. [Laughter.] If he could not get what he wanted, why he would take just what the Convention would give him. He was very humble, and everything was very satisfactory to him. Very well: the plurality question came up the other day, upon its final passage; and I do not know where the gentleman from Lowell was at that time; but another question came up in relation to the election of judges, on which it was understood that he was to speak; and, I believe he did speak in a very humble manner [laughter] and gave his support to the question of seven years' appointments; but when the Convention ruled to change the term to ten years, the gentleman was off; he would not support the bill. [Laughter.] No, not he; he would not support it. He entered his protest against it upon the record, all because he is not pertinacious in regard to any measure which he deems for the interest of the Commonwealth! [Laughter.] Now, Sir, I went for that proposition, because the term of ten years was substituted for that of seven years. I voted for it on that ground, and should have voted against it on the other; so that in one sense, the gentleman from Lowell and myself agree—to differ. Sir, I doubt if you can produce a precedent on record, of such vacillating legislation, as will hereafter be found to have taken place here, when the reports of our proceedings are fully made up. And, on which side is it, Sir? Why, Sir, upon the side of our own party; on the side of those who call themselves progressionists, dividing from time to time, and each claiming the lion's share. I know that it is said, that there are no parties here. In one sense, perhaps not; but there is a party here who wish to take another party under their particular care, because it has been a declaration of the Free Democracy for years —and they have stated it upon this floor—that the Democratic party itself had no character; and the reason why they wished to close with the Democratic party was, that they might take them under their care, and give them a character.

[Laughter.] Now, far be from me any such character as they will give me, from taking me under their care. I do not wish to be taken under the wing of the Free Democracy, unless they will exhibit some straight-forwardness of purpose; some manly, open and independent character, whereby they may exist as a party and maintain it; that is, maintain it by a course of action which shall give the people some confidence that they are acting upon principle. And I am free to admit myself, that I believe that such legislation as has been had in this body is disreputable; and if I understand anything of the character and feeling of the people of Massachusetts, they will never sanction the tergiversation of this body. [Laughter.] Now, when this comes before the people, I think they will judge of it, and investigate it, and I hope they will understand its character. If they feel confidence in, and sanction all the doings of this Convention, they are made of more pliable materials than I have thought the Yankees have heretofore been made of. I do not believe there is such pliable materials in the Yankee character. Sir, the changes which have been made upon this floor, from time to time, by the leaders of the Free Democracy of this body, and by those who are called the true Democracy, have been such, that I think had any spectator been in the gallery, viewing the doings of this Convention, they could not but suppose that the brains of some of such leaders were hung upon a weathercock. It seems to me that certain members have lost sight of the purposes for which they were sent here. They appear to have but one purpose, and that is, the making of political capital for themselves, and to lose sight entirely of the objects, or the purposes for which this Convention was called.

Now, Sir, I have not spoken to the question, and I stated I should not. I did not pretend to, but I want to speak to the question, now, for one moment, and that is to say that after a full and explicit declaration, by a larger number of the members of this Convention than have voted upon any one question which has been taken by it, on this plurality question; after it has been fully decided, by a vote of 193 to 188, I supposed that this body would not again revive this discussion. Now, I will ask from what quarter does this revival come? It comes from one quarter; and that is from the quarter which pretends to hold the balance of power, and who hold the whole sovereignty of this State, or pretend to do so, in their own hands. And, Sir, they say they will go for anything except for electing representatives by plurality at the second trial. I suppose the Convention are in possession of the fact that not less than fifteen or twenty amendments have been offered to this resolution, and which have been voted down by large majorities; and yet this portion of this Convention, my own portion, in part, who have the care of the State upon their shoulders, what do they do? Lengthen out debate, bring up every sort of amendment, and put them to the question in all stages of the debate, from the beginning to the end of the chapter. And after that they move a reconsideration at every stage which will admit of it.

Now, Sir, I claim that this Convention has acted very consistently; that is, that they have voted every way, up and down, perpendicularly and triangularly. [Laughter.] And, Sir, if they have not voted enough let them vote this resolution down, because I am in favor of getting as much as I can in regard to plurality. I know it is little; but mind you, what we have got, if not voted down, is something which the people in the country would like to have. That is, all except one party, because it treads upon its toes, and they have no kind of consideration for the State, and no consideration for anything except their own interest and their own party. These are the facts, and you see I am willing to say all I have to say, and keep nothing back. I hope and trust, that if this Convention has any principle left at all, they will retain that little by saving this bill from utter destruction by the Free Democracy of this Convention.

Mr. WALKER, of North Brookfield. I am very glad that the gentleman for Manchester, (Mr. Dana,) has declared so frankly, as I understood him, that he has made his motion in regard to this subject, because the judiciary question was decided contrary to his wishes.

Mr. DANA. With the permission of the gentleman, I desire to say a word in explanation. I hope the gentleman from North Brookfield is the only one who misunderstood me. I know he misunderstood for otherwise he would not have misrepresented me. I said, the other day, when the judiciary question was proposed to be taken up, I moved to lay it upon the table, and expressed a hope that the Convention would sustain the motion, and treat all decided questions as bygones. I said that if they would lay that upon the table, I would not bring up my motion on the subject of plurality, but would treat that as bygone. But the Convention refused to lay that upon the table, and did reconsider and revise their action upon the subject of the judiciary. That dissolved me from my offer not to bring that motion. I stated this morning that I felt no longer bound not to bring forward my resolution. I made the statement in order to

explain the reason why I had not adhered to my offer.

Mr. WALKER. I hear the gentleman's explanation, and am willing he should have all the advantage it will give him. I know he was particularly sensitive in regard to the judiciary; and I suppose if I were a young lawyer, with fine prospects, admirable abilities, and strong conservative tendencies, I should be in favor of the judges being appointed for life. But since I am not, I have no such opinion.

Now, as to the measure which is under consideration. The gentleman's resolution is to upset all that has been done heretofore. I supposed that we had made a compromise, and that upon that we probably would stand. For the motion which has been made by the gentleman from Walpole, (Mr. Bird,) I shall vote, because that is right, and what he proposes to do should be done; and if that is not carried, then I shall vote for the Report of the Committee, and hope it will be sustained, so that we shall not be compelled to go over the whole thing again. But I cannot concur with those gentlemen who say that if they cannot get what they want by way of amendment, they will vote for plurality all through. I do not understand how gentlemen can do any such thing. If they believe it is wrong in principle, I do not see how they can vote for it in part or in whole. I am satisfied that it is wrong in principle; that, from my observation, and from all that I have seen and heard, the effect of it is pernicious, and only pernicious, in its operation, and therefore I cannot go for it anywhere, or anyhow. I submit to it, if necessary, but I cannot consent to it.

Mr. ELY, of Westfield. I regret to make the motion I am about to make, but feel compelled, by a sense of duty, to make it. I do not wish to cut off any amendment, but I do wish to cut off this debate, of which I believe this Convention is sick. Therefore, I move the previous question.

The question was taken on the motion for the previous question, and there were—ayes, 172; noes, 44.

So the previous question was ordered.

Mr. ABBOTT, of Lowell, called for the yeas and nays upon the amendment offered by Mr. Bird, and they were ordered.

Mr. CROWNINSHIELD, of Boston, called for the yeas and nays upon the amendment moved by the gentleman for Manchester, (Mr. Dana,) and they were ordered.

The question first recurring upon the amendment offered by the gentleman from Melrose, (Mr. Gooch,) it was put, and decided in the negative.

So the amendment was rejected.

The question next recurred upon the amendment offered by Mr. Bird, and the yeas and nays being taken thereon, there were—yeas, 187; nays, 166—as follows:—

YEAS.

| | |
|---|---|
| Abbott, Josiah G. | Fay, Sullivan |
| Adams, Shubael P. | Fellows, James K. |
| Allen, Joel C. | Fiske, Emery |
| Allen, Parsons | Fisk, Lyman |
| Allis, Josiah | Fitch, Ezekiel W. |
| Alvord, D. W. | Foster, Aaron |
| Austin, George | Foster, Abram |
| Ayres, Samuel | Fowle, Samuel |
| Ball, George S. | Freeman, James M. |
| Bartlett, Sidney | French, Charles A. |
| Barrett, Marcus | French, Rodney |
| Bates, Moses, Jr. | French, Samuel |
| Beal, John | Gale, Luther |
| Bennett, Zephaniah | Gardner, Johnson |
| Bigelow, Jacob | Gates, Elbridge |
| Bird, Francis W. | Gilbert, Wanton C. |
| Booth, William S. | Gilbert, Washington |
| Boutwell, George S. | Giles, Charles G. |
| Boutwell, Sewell | Giles, Joel |
| Bradford, William J. A. | Gooch, Daniel W. |
| Bronson, Asa | Gooding, Leonard |
| Brown, Artemas | Graves, John W. |
| Brown, Hammond | Greene, William B. |
| Brown, Hiram C. | Griswold, Josiah W. |
| Brownell, Joseph | Hadley, Samuel P. |
| Bryant, Patrick | Hapgood, Lyman W. |
| Burlingame, Anson | Hapgood, Seth |
| Butler, Benjamin F. | Hathaway, Elnathan P. |
| Cady, Henry | Hayden, Isaac |
| Caruthers, William | Hazewell, C. C. |
| Case, Isaac | Heath, Ezra, 2d |
| Chandler, Amariah | Hewes, James |
| Chapin, Henry | Hillard, George S. |
| Churchill, J. McKean | Howard, Martin |
| Clark, Henry | Howland, Abraham H. |
| Clark, Ransom | Hunt, Charles E. |
| Clarke, Stillman | Huntington, Charles P. |
| Cleverly, William | Hurlbut, Moses C. |
| Crane, George B. | Jacobs, John |
| Cressy, Oliver S. | Kendall, Isaac |
| Cross, Joseph W. | Kimball, Joseph |
| Cushman, Henry W. | Kingman, Joseph |
| Cushman, Thomas | Knight, Jefferson |
| Cutler, Simeon N. | Knowlton, J. S. C. |
| Dana, Richard H., Jr. | Knowlton, William H. |
| Davis, Charles G. | Knox, Albert |
| Davis, Ebenezer | Ladd, Gardner P. |
| Davis, Isaac | Langdon, Wilber C. |
| Day, Gilman | Lawrence, Luther |
| Dean, Silas | Lawton, Job G., Jr. |
| Deming, Elijah S. | Lincoln, Abishai |
| Denton, Augustus | Little, Otis |
| DeWitt, Alexander | Loomis, E. Justin |
| Duncan, Samuel | Marble, William P. |
| Dunham, Bradish | Marvin, Abijah P. |
| Durgin, John M. | Mason, Charles |
| Eames, Philip | Meader, Rueben |
| Earle, John M. | Merritt, Simeon |
| Edwards, Samuel | Morss, Joseph B. |

Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Parsons, Thomas A.
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Rantoul, Robert
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Swain, Alanson
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Turner, David P.
Underwood, Orison
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Weston, Gershom B.
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Wilson, Henry
Winslow, Levi M.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, James B.
Alley, John B.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Russel
Bates, Eliakim A.
Beach, Erasmus D.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Bliss, Gad O.
Bliss, William C.
Bradbury, Ebenezer
Braman, Milton P.
Breed, Hiram N.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Brown, Adolphus F.
Brownell, Frederick
Bullock, Rufus
Bumpus, Cephas C.
Carter, Timothy W.
Chapin, Chester W.
Chapin, Daniel E.
Childs, Josiah
Clarke, Alpheus B.
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Davis, John
Davis, Solomon
Dawes, Henry L.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Easland, Peter
Eaton, Lilley
Edwards, Elisha
Ely, Joseph M.
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Frothingham, R., Jr.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Griswold, Whiting
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Harmon, Phineas
Haskell, George
Haskins, William
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kellogg, Martin R.
Kinsman, Henry W.
Knight, Hiram
Knight, Joseph
Kuhn, George H.
Leland, Alden
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Monroe, James L.
Morey, George
Morton, Marcus
Newman, Charles
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Putnam, John A.
Read, James
Reed, Sampson
Rogers, John
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Talbot, Thomas
Taylor, Ralph
Tileston, Edmund P.
Tilton, Horatio W.
Train, C. R.
Turner, David
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Warner, Marshal
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilkins, John H.
Williams, Henry
Williams, J. B.
Winn, Jonathan B.
Wood, Charles C.
Wood, Nathaniel

ABSENT.

Abbott, Alfred A.
Allen, Charles
Appleton, William
Baker, Hillel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Beebe, James M.
Bishop, Henry W.
Blagden, George W.
Brown, Alpheus R.
Buck, Asahel
Bullen, Amos H.
Choate, Rufus
Clark, Salah
Cole, Sumner
Copeland, Benjamin F.
Curtis, Wilber
Davis, Robert T.
Dehon, William
Easton, James, 2d
Eaton, Calvin D.
Gardner, Henry J.
Greenleaf, Simon
Hallett, B. F.

Hewes, William H.
Hobbs, Edwin
Hoyt, Henry K.
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Johnson, John
Keyes, Edward L.
Knowlton, Charles L.
Ladd, John S.
Lord, Otis P.
Marcy, Laban
Nayson, Jonathan
Norton, Alfred
Osgood, Charles
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Prince, F. O.
Rockwell, Julius
Royce, James C.
Sampson, George R.
Sheldon, Luther
Sherman, Charles
Stevens, Charles G.
Storrow, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Thayer, Joseph
Tower, Ephraim
Tyler, William
Viles, Joel
Warner, Samuel, Jr.
Waters, Asa H.
Whitney, James S.
Wilkinson, Ezra
Wilson, Milo
Wilson, Willard
Woods, Josiah B.

Absent and not voting, 66.

So this amendment was adopted.

The question then recurred upon the amendment offered by Mr. Dana, and the yeas and nays being taken thereon, there were—yeas, 169; nays, 182—as follows:—

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Atwood, David C.
Austin, George
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bliss, Gad O.
Bliss, William C.
Braman, Milton P.
Breed, Hiram N.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Childs, Josiah
Clarke, Alpheus B.
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dawes, Henry L.
Dennison, Hiram S.
Doane, James C.
Dorman, Moses
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Foster, Aaron
Fowler, Samuel P.
French, Charles H.
Frothingham, R'd, Jr.
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Griswold, Whiting
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Harmon, Phineas
Haskell, George
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kellogg, Martin R.
Kingman, Joseph
Kinsman, Henry W.
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Kuhn, George H.
Ladd, John S.
Lincoln, Fred. W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Meader, Reuben
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Osgood, Charles
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Putnam, George
Putnam, John A.
Rantoul, Robert
Read, James
Reed, Sampson
Rogers, John
Sampson, George R.
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Souther, John
Stevens, Granville
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Strong, Alfred L.
Talbot, Thomas
Taylor, Ralph
Thomas, John W.
Tileston, Edmund P.
Tilton, Horatio W.
Train, Charles R.
Turner, David
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilbur, Daniel
Wilder, Joel
Wilkins, John H.
Williams, Henry
Wood, Nathaniel

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.,
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Boutwell, George S.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Bronson, Asa
Brown, Hammond
Buck, Asahel
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Daniel E.
Chapin, Henry
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clarke, Stillman

Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Greene, William B.
Griswold, Josiah W.
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Hathaway, Elnathan P.
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra, 2d
Hewes, William H.
Hobart, Henry
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Hurlbut, Moses C.
Jacobs, John
Kendall, Isaac
Kimball, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Parsons, Thomas A.
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Sylvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Sanderson, Amasa
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, William
Stiles, Gideon
Swain, Alanson
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thompson, Charles
Tilton, Abraham
Tyler, William
Underwood, Orison
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Wilbur, Joseph
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Allen, Charles
Allen, James B.
Appleton, William
Ayres, Samuel
Baker, Hillel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bishop, Henry W.
Blagden, George W.
Bradbury, Ebenezer
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullen, Amos H.
Choate, Rufus
Clark, Salah
Copeland, Benjamin F.
Curtis, Wilbur
Davis, Robert T.
Dehon, William
Eaton, Calvin D.
Fiske, Emery
Gardner, Henry J.
Greenleaf, Simon
Haskins, William
Hobbs, Edwin
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Johnson, John
Keyes, Edward L.
Knowlton, Charles L.
Little, Otis
Marey, Laban
Marvin, Abijah P.
Nayson, Jonathan
Norton, Alfred
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Prince, F. O.
Rockwell, Julius
Royce, James C.
Sanderson, Chester
Sheldon, Luther
Sherman, Charles
Stetson, Caleb
Stevens, Charles G.
Storrow, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Tower, Ephraim
Turner, David P.
Viles, Joel
Vinton, George A.
Whitney, James S.
Wilkinson, Ezra
Williams, J. B.
Wilson, Milo
Woods, Josiah B.

Absent and not voting, 68.

So the amendment was not agreed to.

The question then recurring upon ordering the resolves, as amended, to their final passage,

Mr. HATHAWAY called for the yeas and nays thereon, and they were ordered.

The PRESIDENT. The gentleman from Salem, (Mr. Lord,) has asked for a division of the question, and that the question be taken separately upon the several parts thereof.

Mr. LORD. In order to avoid any imputation of an intention to take up the time of the Convention, I will withdraw my call for a division of the question, and have the vote taken upon the whole at once.

The question then being upon ordering the resolves, as amended, to their final passage, and the yeas and nays being taken thereon, there were—yeas, 181; nays, 120—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allen, Parsons
Allis, Josiah
Alvord, D. W.
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bliss, Gad O.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bronson, Asa
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Butler, Benjamin F.
Cady, Henry
Carruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Henry
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clarke, Stillman
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Dean, Silas
Denton, Augustus
DeWitt, Alexander
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fisk, Lyman
Foster, Aaron
Fowle, Samuel
Freeman, James M.
French, Rodney
French, Samuel
Gale, Luther
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Hawkes, Stephen E.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Henry
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Hurlbut, Moses C.
Kendall, Isaac
Kimball, Joseph
Kingman, Joseph
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Marble, William P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Moore, James M.
Morss, Joseph B.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Newman, Charles
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Rantoul, Robert
Rawson, Silas
Rice, David
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Swain, Alanson
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Turner, David P.
Tyler, William
Underwood, Orison
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
White, George
Whitney, Daniel S.
Wilbur, Joseph
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Woods, Josiah B.

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Austin, George
Barrows, Joseph
Bartlett, Russel
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Blagden, George W.
Bradbury, Ebenezer
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus Cephas C.
Carter, Timothy W.
Chapin, Chester W.
Chapin, Daniel E.
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crosby, Leander
Crowell, Seth
Dana, Richard H., Jr.
Davis, John
Davis, Solomon
Dawes, Henry L.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Easton, James, 2d
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gilbert, Wanton C.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hathaway, Elnathan P.
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hillard, George S.
Hobart, Aaron
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kinsman, Henry W.
Knight, Hiram
Kuhn, George H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, F. W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.

| | |
|---|---|
| Monroe, James L. | Sanderson, Amasa |
| Morey, George | Sargent, John |
| Morton, Marcus | Schouler, William |
| Noyes, Daniel | Sleeper, John S. |
| Oliver, Henry K. | Souther, John |
| Orcutt, Nathan | Stevenson, J. Thomas |
| Paige, James W. | Talbot, Thomas |
| Park, John G. | Tileston, Edmund P. |
| Parker, Adolphus G. | Train, Charles R. |
| Peabody, George | Turner, David |
| Perkins, Daniel A. | Upham, Charles W. |
| Perkins, Jonathan C. | Upton, George B. |
| Plunkett, William C. | Walker, Samuel |
| Pomroy, Jeremiah | Warner, Marshal |
| Putnam, George | Weeks, Cyrus |
| Putnam, John A. | Wetmore, Thomas |
| Read, James | Wheeler, William F. |
| Reed, Sampson | White, Benjamin |
| Rogers, John | Wilder, Joel |
| Sampson, George R. | Wright, Ezekiel |

ABSENT.

| | |
|---|---|
| Abbott, Alfred A. | Gardner, Henry J. |
| Allen, Charles | Gardner, Johnson |
| Alley, John B. | Gates, Elbridge |
| Appleton, William | Gilbert, Washington |
| Ayres, Samuel | Gray, John C. |
| Baker, Hillel | Greenleaf, Simon |
| Ballard, Alvah | Haskell, George |
| Banks, Nath'l P., Jr. | Haskins, William |
| Bartlett, Sidney | Hayden, Isaac |
| Bigelow, Jacob | Hayward, George |
| Bishop, Henry W. | Heywood, Levi |
| Bliss, William C. | Hinsdale, William |
| Bradford, William J. A | Hobbs, Edwin |
| Breed, Hiram N. | Hooper, Foster |
| Brown, Alpheus R. | Huntington, Charles P |
| Brown, Hiram C. | Huntington, George H. |
| Buck, Asahel | Hurlburt, Samuel A. |
| Bullen, Amos H. | Hyde, Benjamin D. |
| Burlingame, Anson | Ide, Abijah M., Jr. |
| Childs, Josiah | Jacobs, John |
| Choate, Rufus | Johnson, John |
| Clarke, Alpheus B. | Kellogg, Martin R. |
| Clark, Salah | Keyes, Edward L. |
| Cleverly, William | Knight, Joseph |
| Cole, Lansing J. | Knowlton, Charles L. |
| Cole, Sumner | Langdon, Wilber C. |
| Copeland, Benjamin F. | Little, Otis |
| Crockett, George W. | Littlefield, Tristram |
| Crowninshield, F. B. | Marcy, Laban |
| Cummings, Joseph | Marvin, Abijah P. |
| Curtis, Wilber | Marvin, Theophilus R. |
| Cushman, Henry W. | Mixter, Samuel |
| Davis, Robert T. | Nayson, Jonathan |
| Day, Gilman | Norton, Alfred |
| Dehon, William | Paine, Henry |
| Deming, Elijah S. | Parker, Joel |
| Duncan, Samuel | Parker, Samuel D. |
| Ely, Joseph M. | Parsons, Samuel C. |
| Eustis, William T. | Partridge, John |
| Fellows, James K. | Parsons, Thomas A. |
| Fiske, Emery | Payson, Thomas E. |
| Fitch, Ezekiel W. | Preston, Jonathan |
| Foster, Abram | Prince, F. O. |
| French, Charles A. | Richards, Luther |
| Frothingham, R., Jr. | Rockwell, Julius |
| Royce, James C. | Tower, Ephraim |
| Sanderson, Chester | Tyler, John S. |
| Sheldon, Luther | Viles, Joel |
| Sherman, Charles | Vinton, George A. |
| Stetson, Caleb | Walcott, Samuel B. |
| Stevens, Charles G. | Wales, Bradford L. |
| Storrow, Charles S. | Whitney, James S. |
| Strong, Alfred L. | Wilbur, Daniel |
| Stutson, William | Wilkins, John H. |
| Sumner, Charles | Wilkinson, Ezra |
| Sumner, Increase | Williams, Henry |
| Taber, Isaac C. | Williams, J. B. |
| Taylor, Ralph | Wilson, Milo |
| Thompson, Charles | Wood, William H. |

Absent and not voting, 118.

So the resolves were ordered to their final passage.

Mr. FAY, of Southborough, moved that the Orders of the Day be laid upon the table.

The motion was agreed to.

*Leave of Absence.*

Mr. FAY, from the Committee upon Leave of Absence, reported :—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 22, 1853.

The Committee on Leave of Absence report, that leave of absence be granted to Mr. Meader, of Nantucket, and Mr. Cummings, of Ware, for the remainder of the session.

For the Committee,

SULLIVAN FAY, *Chairman.*

The Report was accepted by the Convention, and agreed to.

*Amendments of the Constitution.*

Mr. GRISWOLD. I move that the Committee of the Whole be discharged from the farther consideration of the resolves upon the subject of future amendments of the Constitution, and that they be placed in the Orders of the Day next after the resolves upon the subject of the lieutenant-governor.

Mr. HALLETT. I hope the motion will not prevail, and that the gentleman will not press it. I do not see why we should not have the right to pursue the same course in relation to this subject, that we do as to all others. No subject which has come before this Convention, has been taken out of the Committee of the Whole, until the Committee of the Whole has seen fit to report it back to the Convention. I regard this as the most important fundamental proposition that we can put into the Constitution. It will be very easy, at the proper time, to move to go into the Committee of the Whole, and then take up the

subject, consider it, and then report it to the Convention.

Mr. GRISWOLD. I supposed I had the concurrence of the gentleman for Wilbraham, but I see I have not. The Convention will recollect that we have been in the Committee of the Whole as many as three or four times upon this subject; and it seems to me that we might as well take the remainder of the discussion upon it in the Convention, as to go into Committee of the Whole again. I think that would be a saving of time. I did not make the motion to prevent the gentleman from offering an amendment, but because I thought we might dispose of it in that way sooner than we otherwise could.

On motion of Mr. WALKER, the Convention, at five minutes before two o'clock, P. M., adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

The Convention resumed the consideration of the Orders of the Day, the next item being the resolves on the subject of the

*Lieutenant-Governor,*

The question being on their final passage. They are as follows:—

ART. 1. There shall be annually elected a lieutenant-governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.

ART. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

ART. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor for the time being shall have and exercise all the powers and authorities, and perform all the duties of governor; and whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor shall be governor of the Commonwealth.

The question being taken, it was decided in the affirmative.

So the resolutions were passed.

*Specie Payments.*

The next item on the calendar, being the Report of the Committee on Banking, that it is inexpedient to insert in the Constitution any provision on the subject of the suspension of specie payments by banks, was taken up for consideration.

The Report was concurred in.

*Unrestricted Representation.*

The next item, being the Report of the Committee on the House of Representatives, that it is inexpedient to insert in the Constitution a provision, declaring that towns and cities may be represented by any citizens of the Commonwealth, was taken up for consideration.

The Report was concurred in.

*Quorum of the House of Representatives.*

The resolve relating to this subject, was next taken up. The question being on inserting "one hundred" in place of "a majority of the members," as the number which should constitute a quorum.

The amendment was adopted, and the resolve as amended, passed to a second reading.

*Pay of Officers.*

The resolve on the subject of the pay of the officers of the Convention, was next taken up, the pending question being on its final passage.

The resolve was passed.

*Termination of Debate.*

On motion of Mr. CUSHMAN, of Bernardston, it was ordered, that debate on the resolves on the subject of future amendments to the Constitution, cease in one hour after the Convention shall again go into Committee of the Whole on that subject.

*Constitutional Conventions.*

On motion of Mr. CUSHMAN, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

On the resolves on the subject of Conventions for amending the Constitution, Mr. Griswold, for Erving, in the chair, the pending question being on the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett).

The amendment was read by the Secretary.

Mr. HALE, of Bridgewater, gave notice that he should offer an amendment to the third resolve of the original Report, as soon as he could get the floor for that purpose.

Mr. HALLETT, for Wilbraham. I have explained this proposition at some length, upon a

former occasion, and I do not mean to go over any ground that I can possibly avoid. I desire, simply desire, to ask those members of the Convention, who, in the first week of our existence here, authorized the election of a member for Berlin, and proclaimed the constitutionality of this Convention, beyond the power of legislative action or repeal, whether they mean now to conform to that doctrine, in making this Constitution, or whether they intend to deny it?

The proposition, as it has been reported by the Committee, does not conform to that doctrine; for the reason that it makes it dependent upon the action of the legislature, whether the people shall have a Convention in future, or not. Neither does the proposition of the gentleman from Boston, (Mr. Giles,) who has very honorably maintained the principle, meet that issue, because it says the people may meet, according to their will, *legally expressed;* but, when you come to carry out the phraseology, you find that the will of the people "*legally* expressed," must mean a declaratory act of the legislature.

The second proposition of the gentleman from Boston in relation to holding a Convention every twenty years, is also objectionable, for the reason that it makes the people elect delegates and hold a Convention, whether they desire it or not. Now, I do not suppose we want a provision that shall compel the people to hold a Convention, until they have declared their wish to hold one. These are my objections to the propositions of the gentleman from Boston, though in other respects, I agree with the general proposition he has laid down.

Now, Sir, I desire to remark, in relation to the proposition which I have had the honor to present, and which is now before the Committee for their consideration, that it has been concocted after a good deal of deliberation, and after consultation with a good many gentlemen who wish to meet the difficulty presented in this question, which is, in fact, the Rhode Island question as to the right of the people to make their own Constitutions. It is a question involving the doctrine whether the sovereignty is with the people or with the legislature; and the proposition I have presented, is one which, I think, I can satisfy the Convention, meets the question fully.

The proposition now before us is this: that at the general election, in 1873, and every twentieth year thereafter, the people shall give their votes upon the question whether there shall be a Convention to be held in conformity to the Act of 1852? If there are any town meetings held in 1873 for the election of governor, then the same rules and regulations which apply to that election will also apply in taking this vote. These votes are to be received, returned, counted, and declared, and if there be found a majority in favor of calling a Convention, then your Constitution will declare that to be the will of the people, and a Convention must be held accordingly. The delegates are then to be chosen the first Monday of the March next ensuing, and are to meet at the State House on the first Wednesday in May ensuing, with all the powers, and under the same regulations, as are provided in the Act of 1852.

There you have the whole matter in your Constitution, entirely independent of the legislature or any other power, to repeal it or interfere with it in any manner. It is to be in conformity to the Act of 1852, which, as we all know, provides that the delegates shall be chosen in the same manner precisely as the representatives are chosen; so that if there are members of the House of Representatives chosen under the Constitution, there will be delegates to the Convention chosen in the same manner. This Act also provides for the promulgation of the Constitution to the people, and for every proceeding, precisely like the Act under which the Convention of 1820 was called. Now, this Act has, during the last forty years, grown into common law; and there need be, therefore, no apprehension that it will not be quite sufficient to meet the wants of the case twenty years hence.

The first resolution proposed to be adopted, provides for submitting the question to the people every twenty years; and if gentlemen want to give the people the power to call a Convention which it is not in the power of the legislature to repeal or to interfere with, here is such a provision.

The next resolution provides that the legislature shall have power to submit the question whether there shall be a Convention at any other time than at the regular period of twenty years. The present legislature have no power to call a Convention. It is not in the Constitution. They assumed the power under the authority of that provision, which says the legislature may pass laws for the general welfare; but we surely do not mean that the legislature shall pass laws or submit propositions which are not authorized in the Constitution, in future. We want to place the question of the constitutionality of the legislature to call a Convention beyond a doubt, by placing a provision directly to that effect in the Constitution, and here it is in this second resolution. Well, Sir, when the legislature puts out a proposition for calling a Convention, and the people accept it, do you want to place it in the power of the next legislature to come in and

upset all the people have done? We denied that doctrine here in this Convention; we said that the legislature had no right to repeal what a former legislature had done, after the people had given vitality to the proposition by their acceptance of it. But, Sir, what said the learned gentleman from Boston, (Mr. Choate,) when the Convention had the Berlin matter under consideration, on the 12th of last May. Let me quote from the remarks of that learned gentleman:—

"I repeat it, then: the historical fact is, that the people expressed themselves in favor of a Convention, and there they paused. What does that pause imply? This exactly—that they thereupon leave it to their actual legislature, under the existing Constitution, to go on, in its own way, on its own responsibility, and to make a law or laws, by which the popular vote for a Convention may be carried out. Under that repose, under that inaction of the people, after that manifestation of their will in that general form, it became a matter for mere law in its ordinary course, to devise and enact details; and thereupon the legislature made a law of details; amendable, like any other law, by another legislature; their successors amended it, and under the law thus amended, we are here to-day."

That is the view taken by the gentleman from Boston; that when the legislature put out this proposition, and the people said "yes," it was simply saying that they would have a Convention, and that they then left it to the legislature to regulate its details, and that therefore, it being a simple law, a subsequent legislature might amend, or might repeal it.

Now, what does the still more learned, though not so eloquent, gentleman from Cambridge, (Mr. Parker,) the able professor of Harvard College, say? In what way did he meet our arguments in support of the validity of this Convention? He said:—

"What is the consequence of this? Just the whole matter in dispute, Sir. I do not understand the honorable member for Wilbraham to maintain that this Act is a part of the Constitution, or that it stands as an amendment to the Constitution; but he says that it is something which the legislature cannot touch, because the people have acted upon the subject. Well, Sir, if I am correct in what I have said; if it stands as a law of the legislature; if it was a law of the legislature in its inception, and is nothing more than a law of the legislature still, notwithstanding, by its terms, it required the answer of the people before the last part of it should take effect, and have any efficacy at all; if it stands, like other laws of the legislature, as a constitutional law, then, Sir, it is in the power of the legislature, just like other laws. The people of this Commonwealth have constituted the legislature their agents, for the purpose of enacting laws, and for the purpose of repealing laws."

Again, he says:—

"I say it was legally competent for the legislature, at the time they modified that law, to have repealed it totally, so far as it stood a law upon the statute book, to have put an end to all farther action under it. It might have been done legally. I do not say that a revolution might not have occurred in consequence of such a proceeding; that is another thing. I am aware, Sir, that such a disregard of the will of the people might justify a resort to force; but that is another thing. As a law upon the statute book, having the force and vigor of a law upon the statute book, and no more, the legislature have the same power over it which they have over any other law, and they might have repealed it if they had seen fit to do so. Why did they not do it? Because they ought not to; because it was not proper, under the circumstances, that they should exercise that power, and they exercised their power in a way that they did think proper. I maintain farther, Sir, and I am willing to place myself upon the issue, that this Convention sits here to-day under that as a statute law, and nothing more; and the legislature being still in session here, may constitutionally and legally put an end to the existence of this Convention as a body assembled under the Constitution and under law, before that session closes. [Sensation.]"

Here the reporter well says, "*sensation.*" There was a sensation. When the learned professor announced that the legislature then in session had the power, by a repeal of the Act calling the Convention, to turn us out of doors, there was a great sensation in this body. But now, when we come in here and propose a remedy for such a state of things occurring in the future, the only sensation it produces seems to be to have the subject disposed of as soon as possible. Sir, ought we to leave the Constitution without some provision clearly defining what are the powers of the legislature upon this subject? When a learned professor of law comes in here, and, with his legal reputation, asserts that the Convention are mere puppets in the hands of the legislature, to be turned out of doors at the pleasure of our masters, it follows, if you pass only the provision reported by your Committee, that the Convention intends to legalize the argument; for if the legislature are to pass a law to provide for a Convention, it follows that they merely pass a law which any subsequent legislature may repeal; and if it be so, does it not place the Convention in the hands of that subsequent legislature? We held, in the Berlin argument, that if the legislature submitted a proposition for holding a Convention, to the people, which the people accepted, by their votes of yea upon it—then it was not a repealable law,

but the will of the people collected, and that a subsequent legislature could not touch it or repeal it. But if you take the proposition as it stands in the Report of the Committee, which leaves it for the legislature to submit the proposition to the people in the first place, and then leaves it to the legislature to provide for holding the Convention, it will also leave it in the power of the legislature to repeal the Act calling the Convention, if they think proper. Do gentlemen mean to do that? I think not. Now, my substitute says that the question shall go to the people as a whole. If the people vote affirmatively upon it, there is an end of the matter. The Convention lives. The action is complete, and the legislature can usurp no power whatever over it.

Then, the third clause provides for the general security of the right of the people to hold a Convention, merely negativing any concession of that right, and that, I think, covers the whole ground.

Now, Mr. Chairman, there is a very high legal decision upon this point, which we must either resist by force of arms hereafter, or we must amend our Constitution so as to preserve this right, which the court practically has denied, or give up the right of the people to hold Conventions without the previous consent of the legislature. We must amend the Constitution, in order to secure the people against that decision of the United States court. We must do it, or the people have lost the power of calling a Convention without the consent of the legislature. Unless you put this or a similar provision in your Constitution, you recognize the doctrine of the United States supreme court, that the people have lost the power of calling a Convention, without the consent of the legislature. I state this point distinctly, from the record. A case arose in the supreme court of the United States, in 1849, which will decide the matter now before us, against the people, unless we make provision to the contrary. The case in point has occurred where there were two governments in existence, as there were in Rhode Island; one a government of the freeholders, which persisted in holding its power against the people, under the old Charter of the King of England, and the other a Constitution and government framed by a Convention called by a large majority of the whole voters and of the whole people—where there were two Constitutions and two legislatures; and there the question was, which was the legal government? Well, Sir, how did they proceed? The advocates of the people's government went before the court and showed that a majority of seven thousand of the people of Rhode Island had voted in favor of that new Constitution, and they offered to produce the testimony or deposition of every voter, in proof. But what did the supreme court say to that? They said, all that might be very true, but it could not be admitted as entitled to any weight in deciding the question, because there was no law and no Constitution under which that vote was taken. There was no authentic Act by law to collect the will of the people, and therefore the people could never legally show they had any will!

That was the argument of the counsel for the charter government against the people, and it was an argument which the court evaded, by disclaiming jurisdiction, while at the same time they virtually affirmed it, and thus assumed that there must be some law or some constitutional provision to collect the will of the people, or they cannot speak. The will of the people is supreme, they all say, whenever you find it out; but in order to find it out, you must get a grant of a previous law from the legislature, or put some provision in your Constitution to collect it. If you have no such law, the will of the people goes for nothing. They can, in fact, have no will. Hence, unless you put into your organic law a provision to collect the will of the people, it is all nonsense about making government, that you read in the Bill of Rights; and the courts and bayonets will put it down if you move a step. Now, do we wish to have a Constitution that is liable to any such legal construction? Why, Sir, if the person had been president of the United States, who failed of being elected in 1852—if General Scott had been president of the United States, the law by which this Convention is sitting here to-day would have been repealed by the legislature of last winter, who went as far as they could go, without resort to arms; and if the people had undertaken to have elected their delegates, and those delegates had met here in the State House, the governor of the Commonwealth, who, in his message, declared the Convention unconstitutional, or at least of doubtful constitutionality, would have called upon the president of the United States, and officially informed him that there was an insurrection here, and the army and navy of the United States would have been sent here to put it down, and we should not have had a Convention, unless we fought for it. That is what the supreme court of the United States have adopted as the rule of the judicial power following the political power. It all depends upon who is president.

Now, do you want to leave posterity in the same condition, subject to the military despotism of a president of the United States? If you do, say so. Say it fairly, out and out, and provide

that the people shall hold Conventions only according to the sovereign will of the legislature, and strike that unmeaning article about the right to frame government, out of the Bill of Rights.

Now here is a principle which was laid down by the United States court, though dissented from, in effect, by the learned judge, now no more—Judge Woodbury—but carried out by the majority of the court. It is a principle which would leave us nothing but simple revolution, to reform or change government, under our present Constitution. They admit, the judges admit the power of the people, but how do they say it must be exercised? I read from Howard's Reports of the Supreme Court of the United States, the note of the points in the two cases of "Martin Luther *vs.* Luther M. Borden, et al," and "Rachel Luther *vs.* Borden."

"At the period of the American Revolution, Rhode Island did not, like the other States, adopt a new Constitution, but continued the form of government established by the Charter of Charles II., making only such alterations, by acts of the legislature, as were necessary to adapt it to their condition and rights as an independent State.

"But no mode of proceeding was pointed out by which amendments might be made.

"In 1841, a portion of the people held meetings, and formed associations which resulted in the election of a Convention to form a new Constitution, to be submitted to the people for their adoption or rejection.

"The Convention framed a Constitution, directed a vote to be taken upon it, declared afterwards that it had been adopted and ratified by a majority of the people of the State, and was the paramount law and Constitution of Rhode Island.

"Under it, elections were held for governor, members of the legislature and other officers, who assembled together in May, 1842, and proceeded to organize the new government.

"But the charter government did not acquiesce in these proceedings. On the contrary, it passed stringent laws, and finally passed an act declaring the State under martial law.

"In May, 1843, a new Constitution which had been framed by the charter government, went into operation and has continued ever since."

I now read from the opinion of the court, as far as it can be said to be an opinion, delivered by chief justice Taney:—

"No one, we believe, has ever doubted the proposition, that, according to the institutions of this country, the sovereignty of every State resides in the people of the State, and that they may alter and change their form of government at pleasure. But whether they have changed it or not, by abolishing an old government, and established a new one in its place, is a question to be settled by the political power. And when that power has decided, the courts are bound to take notice of its decision and follow it."

Again, it is said in that report, as a consequence of the above:—

"If it be asked, what redress have the people, if wronged in these matters, unless by resorting to the judiciary, the answer is, they have the same as in all other political matters. In those they go to the ballot-boxes, to the legislature, or executive, for the redress of such grievances as are within the jurisdiction of each; and, to such as are not, to Conventions and amendments of Constitutions. And when the former fail, and these last are forbidden by statutes, all that is left in extreme cases, where the suffering is intolerable, and the prospect is good of relief by action of the people without the forms of law, is to do as did Hampden and Washington, and venture action without these forms, and abide the consequences."

Now, Sir, I do not want that the people of Massachusetts should hereafter be compelled to resort to any such measures as that; and I have, therefore, submitted this series of provisions, recognizing the right of the people to alter and amend their Constitution without any previous action, or subsequent interference of the government. There is the whole argument. I have not time to dwell any longer upon this subject than to say that the doctrine of the supreme court of the United States, and many very eminent and learned lawyers of this State is, that the people cannot take the first step in reforming the Constitution, or holding a Convention, unless they get a grant of an act from the legislature, or incorporate such a provision in their Constitutions as is here proposed; and that if they move without that first step emanating from the legislature, unless it is provided for in detail in the Constitution, they move in rebellion or revolution. This provision, then, wholly independent of legislation, is the only peaceful mode of reaching that result. There is no inconvenience that will follow from it whatever. It gives you all you desire, for reforming the Constitution, and there leaves it. I do earnestly hope that there will be no hesitation on the part of the majority of this Convention, in placing that amendment in the Constitution, if they mean to stand upon the principles that moved the people to call this Convention, and thereby to recognize, in the organic law, practically, as well as by a theory which the courts construe away, the legitimate, inalienable, and operative sovereignty of the people.

Mr. BURLINGAME, for Northboro'. Mr. Chairman: Since our sittings commenced, we have had under consideration a great number of grave questions; questions involving the power of this

Convention, derivative, and inherent; questions touching the quality of a legislative enactment; questions touching the nature of a fundamental law; questions as to how these differ, how one transcends the other, as the Creator transcends the creature. But I maintain that this is the grandest question, in some respects, upon which we have been called to pass since our deliberations commenced; and yet we have but one hour, in which to consider it.

As I differ upon this subject, from some gentlemen who have preceded me, I wish to have that difference known. I wish to give some reasons, to show why we ought to adopt the amendment, proposed by my friend for Wilbraham, (Mr. Hallett). And preliminary, I start with the great doctrine, that the people are the source of power. I hope the Committee, when I say this, will not tremble, because they may fear a speech upon abstractions. When I say the people are the source of power, I mean the term "people" shall include every human being in whom the good God has breathed the breath of life. If it is admitted that the people are the source of power—and anybody who denies this, Mr. Webster said, must argue without an adversary—then the next question is, how shall this power flow forth from the people into practical government? In the first place, as the people cannot act in their primary capacity, it is necessary to delegate their power; and in the absence of government, and when it has been overthrown by revolution, they must act by spontaneous movement, according to their common sense, and according to the measure of their civilization. They must delegate their power, and they must clothe their agents with authority, and charge them with the great duty of giving their collected will expression in a Constitution. When they have done this, and when the work which these agents may do, shall have been accepted by the people, it becomes the fundamental law of the state.

Now, we have the machinery of government. According to the delegate system on the American principle, that the people are the source of power, how shall we put it into operation? Necessity gave birth to another American idea—the representative system. The representative is inferior to the delegate, in that he is charged with the duty of performing ordinary legislation; and all he does, he must do under, and in obedience to the Constitution, which the delegates, representing the will of the people, have made. We have, then, two great American systems upon the American principle—that the people are the source of power. So far, I suppose we all go along together. Here, our paths must separate. The question now arises, how are the people to change their fundamental law, when it is thus established? There are two schools in this country, and this is the doctrine of one of them: inasmuch as the people are the source of power, inasmuch as the people are sovereign, inasmuch as that sovereignty cannot be alienated by them, in such a manner that it cannot be resumed when the safety of the state shall require it, then, I say, it is for the people to determine in what manner, and at what time, they shall change their fundamental law. That is the doctrine of one school—the Democratic school—and it is the doctrine to which I give my hearty assent. On the other hand, there is another school in this country, and there always has been, and there always will be, probably, which, while it admits in the abstract, that the people are the source of power, and are sovereign, yet denies the right to that sovereign power, practically to act in a sovereign manner.

The doctrine of this party was stated most clearly by Mr. Webster, in the great Rhode Island case, with the power of statement peculiar to that man. This is the doctrine of that party, as stated by him: the collected will of the people is sovereign—as sovereign, he said, as the will of the Czar of Muscovy, when it is ascertained, and this is his rule for ascertaining it. The will must be collected legally, by some rule prescribed by previous law. Do you not see, at a glance, that a wide ocean rolls between these two doctrines? One places the power to initiate a change in the fundamental law, in the legislature; and the other places it with the people.

One is the doctrine as laid down by the allied sovereigns at Laybac, when they contended that all reforms must proceed from the ruler; and they had the impiety to say that they had the Divine authority for withholding or granting, all rights and privileges, from, and to, the people. The other is the American doctrine, born here on this continent, on board the Mayflower, a little more than two hundred years ago, when it fluttered its weary wing into Massachusetts Bay. The other is as old as tyranny; it has stained a thousand years with its crimes, and cannon may be thundering to-day on the banks of the Danube, in its defence. Gentlemen may say that you can leave this matter safely to the legislature. They say when the people wish a change of their laws, the legislature will understand it, and will submit the question to the people. It has become convenient, I confess, in this country, to allow the legislature to collect the popular will, and that mode will probably be adhered to. But suppose the legislature refuse to collect the popular will, then what are you to do? You say it

will not refuse. I say it may, and there is a precedent that it will sometimes do so; I refer to the case of Rhode Island. There the people struggled for sixty-five years, to get a change of their Constitution, but the power being in the hands of a few landholders, the legislature refused perpetually to act. They were driven to act outside of the Constitution. They collected the will of the majority of the legal voters, and seven thousand majority of the adult male population; but then the court, subsequently, when the case was tried, said it could not take evidence of these irregular proceedings.

There happened to be, at that time, as the gentleman for Wilbraham said, an accidental president in the chair at Washington; and, what is of much more consequence, he had at his right ear a man with brains enough to have made ten thousand such accidental presidents, belonging to the opposite school upon this subject; and by his advice the president of the United States instructed the officers of the United States government to sustain the old government in Rhode Island; and when this was done—when the United States came with its whole power—the arm of democracy in that State was unnerved; though if one gun had been fired, the whole country might have rallied to its defence. It may be better that they yielded—that they bided their time, and sought a peaceful solution of their difficulties. In the case of Michigan, when that hardy Democrat, General Jackson, occupied the chair of state, the territorial government refused to call a Convention, and the people assembled in their counties; they elected delegates; they had a Convention; they made a Constitution; they inaugurated a government under it. The government of the United States sent a governor there, but they did not heed him; they laughed him out of the State, and he has never been heard of since. Then they applied to the general government for admission into the Union—at that time I was a resident of of the State—General Jackson commended the course pursued by us, and the Democrats of the United States Senate, twenty-seven in all, under the lead of Old Bullion, backed up the conduct of the people of Michigan, and she was admitted as a State; and I remember with what pride I saw her beautiful banner unfurled for the first time, bearing the somewhat boastful motto, though veiling it under a dead language: "*Si quæris Peninsulam amœnam circumspice*," which freely rendered, is, "If you seek a beautiful peninsula, look around you." I have now stated the two opposing doctrines, and I have given you two precedents illustrating them.

You have in the Rhode Island case the decision of the supreme court, inclining to the federal side upon this subject. Yet, in the face of all this, gentlemen may say that there is no necessity for incorporating such a provision as is here proposed, into the Constitution; that it is enough to acknowledge that the people are the source of power; that they are sovereign; but I say it is of no earthly use—and I say this, having reference to the decision of the supreme court in the Rhode Island case—unless you determine how this sovereignty shall exercise that power. It is because of these things, that I am in favor of the amendment proposed by the delegate for Wilbraham, (Mr. Hallett). I desire to incorporate into the fundamental law, I desire to put into the unbending text, something that shall be so clear and certain upon this subject that there cannot be any constitutional doubt about it; so that we shall not hold our Conventions upon any such accidental circumstance, as whether General Scott or Franklin Pierce happens to be president of the United States; so that we shall not have held over us, *in terrorem*, the opinion of a supreme court in this State, ready to give the benefit of that doubt to the doubter. I am, therefore, in favor of placing in the Constitution, in substance, the amendment of the delegate for Wilbraham (Mr. Hallett).

The first part, if I understand it, executes itself. If the selectmen of any town refuse to receive my vote, or the vote of any man, they are liable to punishment. The second part of the resolve clothes the legislature with the power of submitting to the people the proposition for a Convention. It does not limit the people, but only the servants of the people, as the people cannot limit themselves. It gives the legislature power to submit the question to the people, and that will be its warrant for acting; and when the question is submitted, and the people have voted, that closes the question as far as the legislature is concerned. Then men cannot come here in the face of this language and say that they have a right to repeal that enactment or fundamental law of the people, and force the people of Massachusetts into revolution. By adopting this proposition, we shall have a peaceful and proper mode by which we can change our fundamental law. The last part of the proposition is of more importance, it may be, than all the other propositions.

It declares, clearly and distinctly, the doctrine of the democratic school for the first time in Massachusetts; that the people are the source of power; that they cannot alienate that power; and that it is for them to determine at what time and in what manner they will change their fundamental law. Men may say that it is not neces-

sary to declare this great right of the people. That it exists. Then I submit that it was not necessary to have the Magna-Charta, the Bill of Rights, or Declaration of Independence. I say it is necessary, when the people have achieved a right, to put it into the unbending text, so that men who believe in law merely because it is law, will not deny it, and so that others may stand by it because of its merits.

I do not wish to prolong my remarks. I have taken up too much time already, but it seems to me this is the most important question, in some respects, that we have had before us. I am earnestly desirous that the proposition of the delegate for Wilbraham, (Mr. Hallett,) in some form, should pass.

Mr. HALE, of Bridgewater. This question, Mr. Chairman, has assumed more importance than was contemplated, I apprehend, by the Convention, when they decided to limit the discussion to one hour. I believe three-fourths of that time has already expired; taken up by two gentlemen in favor of the amendment proposed by the gentleman for Wilbraham, which he stated the other day was a vital one to be decided by this Convention. I presume that the Convention do not desire to determine this question under the discussion which has been had. I therefore move that the Committee now rise and report progress, for the purpose of moving a reconsideration of the vote limiting the debate to one hour. I trust that the Convention will see the propriety of adopting that course, so as to give some opportunity, at least, to discuss a question of this magnitude.

The motion that the Committee rise was not agreed to.

Mr. HALE. I now propose, if it is in order, to move an amendment to the third resolution. I do not propose to discuss it. I move to strike out the word "majority," wherever it occurs, and insert the words "two-thirds."

The language of the resolution is, "a majority of the whole number of senators and representatives." That, I suppose, would be a majority of the whole number assembled in Convention. I propose to strike out the word "majority" and insert "two-thirds," so that it will be two-thirds of the senators and of the representatives.

Mr. BRIGGS, of Pittsfield. Does not that open up the whole question?

The CHAIRMAN. I suppose it does.

Mr. BRIGGS. I concur in the view taken by the two gentlemen who have preceded me, in the idea that this is an important question, and one which we ought to enter upon with great gravity, and candor, and consideration. We propose here, as in other parts of the Constitution, not only to bind ourselves, but to bind those who shall come after us, and prescribe the manner in which that sovereign will of the people, that has been so often alluded to, shall be exercised. The Report of the Committee—and I very much regret that the chairman is not here—prescribes one mode of obtaining future amendments of the Constitution. The gentleman for Wilbraham, (Mr. Hallett,) prescribes another mode. What are they? The first prescribes that in twenty years from this time, and in each succeeding twenty years, the question shall be submitted to the people, "Shall there be a Convention to revise and alter the Constitution?" that if the people so determine, their legislature—*their legislature*—shall call a Convention in such manner as they shall deem wise and proper. Lest under any circumstances the legislature should fail to do its duty, the second resolution, provides the manner in which that purpose shall be accomplished. Then there is a third resolution, that provides that the legislature may propose amendments to the people, there being a majority in favor of it for two successive years, and that the people shall act upon these propositions; and, if adopted, their amendments shall become part of the Constitution of the Commonwealth.

The gentleman for Wilbraham provides, by his amendment, that once in twenty years the people shall be called upon to vote on—what? Mark, Sir, —and I call upon every gentleman who hears me, to mark and note in what respect we propose to hold the opinions of those, and the rights of those, that shall succeed us,—not merely that they shall have a Convention, but shall have a Convention to be held, not as their legislature may prescribe, but as the legislature of 1852 have prescribed. That is the regard which is had for the opinions and rights of the people. Sir, with one effort it is proposed to do what, so far as I know, never has been done by any body like this—to incorporate into a Constitution, the fundamental, lasting law of your land, an entire statute. What becomes of the will and independence of that people of whom my young friend from Northborough discoursed so eloquently? You may have a Convention if you will have it according to the law of 1852. And, perhaps there is a construction of this provision which makes it include the amendment of that law passed last winter. The gentleman did not mean to do that; but, perhaps, by a construction of that Constitution, as courts construe statutes, it might perchance impose upon the people the duty of holding the Convention according to both statutes; for one is an amendment of the other, and, in law, a part of the statute.

Now, shall we do this? I appeal through you, Mr. Chairman, to every delegate who hears me, whether he intends, by his vote here, to impose upon those who shall succeed us when we shall be silent in the grave, a condition that if they want a Convention to amend the Constitution, it shall be held according to, and in compliance with, a statute of Massachusetts passed in 1852? Sir, was such a thing ever heard of? I hope gentlemen will pause before they undertake to lay such a burden as this upon those who are to come after us. I say nothing of the wisdom of that statute, or otherwise. That is immaterial. It may be the wisest statute ever passed; but, if succeeding generations want a Convention to alter their Constitution, provide for them the greatest facilities to get it; but in Heaven's name leave to them and their own legislature to provide in what manner they will have it, and how it shall be brought on; leave open before them, in the broadest possible manner, every right and every facility to call a Convention and alter their Constitution in any mode they please; but do not undertake to impose upon them a statute—an entire statute—with all its provisions, as one of the conditions under which that Convention is to be held.

The gentleman points to a provision here as to the number of delegates that towns shall be entitled to, not exceeding the number of representatives to which each town or city was entitled last year. So, Sir, of all these provisions, as I said before—I do not care what they are—was it ever heard from the beginning of free governments to this time, that a Convention should undertake to impose upon those that should come after them, not only that they should have a right to have a Convention, but how that Convention should be called, by whom the delegates should be chosen, and all the arrangements about it? And, yet, Sir, here you have it; and you have it from a gentleman who proclaims over and over again his regard for the sovereign rights of the people; and he proposes to protect the sovereign rights of future people by providing that they shall never have a Convention except they comply with the statute of 1852. Well, gentlemen, in the name of reason, in the name of that liberty of which gentlemen talk, in the name of that sovereignty before which they bow, I ask whether you will do this?

Then, Sir, the gentleman's amendment provides that each legislature, every year, may, if they choose, put the question to the people, whether they will have an alteration of the Constitution. Well, Sir, that is providing facilities by which every change of party, every swelling political wave that changes the administration of the government of the State, may lead to a call upon the people to say whether they will alter their fundamental law. If you think that better and wiser, than to have the legislature propose amendments between these periods of twenty years, I am content with it.

Mr. HALLETT. Will the gentleman allow me to ask, whether I understood him to say that we do not allow the legislature to pass amendments?

Mr. BRIGGS. No, Sir. It allows the legislature to submit to the people the question of a Convention every year. It says:—

> The foregoing resolution shall in no wise restrain or impair the reserved right of the people, in their sovereign capacity, at all times to alter and change their Constitution and frame of government.

In the name of common sense, what does this mean? Here you say that once in twenty years, about half way in a generation, the question shall be submitted to the people, whether they will have a Convention. Then you provide that their legislature may put the question annually to them, and then you resolve that by their reserved sovereignty they shall have this right. What does that mean? I confess I do not know. In raptures, almost, my young friend, (Mr. Burlingame,) breaks out in encomiums, in unknown strains, upon this new declaration of the rights of man. For the first time on this earth, I understood him to say, this right is embodied in a Constitution. Sir, I commend to my young friend to look into that glorious old Bill of Rights, drawn up by a man—no summer soldier, or summer patriot; drawn up by a man under sentence of a government against which he had rebelled; drawn up by a man and passed by a body of men who had been baptized in blood, and whose patriotism was purified by the fires of the Revolution—a man, Sir, who, when he penned that declaration, and that Bill of Rights, knew not whether he should suffer as a traitor, suspended between the heavens and the earth, or receive from future generations the gratitude of freemen. See whether this man, and those who acted with him, had any such conception as this:—

> "Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; therefore, the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness requir it."

Sir, what are the last few words of that third

resolution, but an echo of these glorious sentiments, these great principles of human rights, planted as deep, and as firm and everlasting as the granite rocks of the native town of their author? What else is it? And yet this amendment is declared to be the first proclamation of these noble sentiments. And in what manner does my young friend, and my friend for Wilbraham, propose to carry out this provision? Why, Sir, that those who are to succeed us may have a right to alter or amend in any manner they please, the Constitution and Frame of Government? No, Sir, no; they may have a right to call a Convention if they will do it in the manner prescribed in the statute of 1852; and not in any manner that they shall please. But they may vote on the question whether they will have a Convention according to the act of 1852. And this is carrying out the principle that they may alter and amend the Constitution when and how they please.

Sir, this is a great question. I will not go into the question at all whether the people are the fountain of power. Sir, who doubts it? I could not discover where my young friend drew the dividing line between the different opinions of what he calls the two schools, held in this country, notwithstanding the keenness of my young friend's remark, unless this was it——

[The hour for closing debate having arrived, the remarks of the gentlemen were, at this point, interrupted.]

Mr. HALE, of Bridgewater, modified his motion so that a majority of the Senate and two-thirds of the House of Representatives should be required to ratify the amendments to the Constitution.

The question being taken upon the motion of Mr. Hale, as modified, it was not agreed to.

Mr. HALLETT modified his amendment by adding after the words "March next succeeding," the words, "in conformity with the law then in force for the election of representatives," so that the clause would read as follows:—

And thereupon delegates shall be chosen on the first Monday of March next succeeding, in conformity with the law then in force for the election of representatives, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the same manner and with the same authority as is provided in the second, third, and fourth sections of said Act.

Mr. SIMMONS, of Hanover, moved to amend the substitute proposed by Mr. Hallett as an amendment, by adding thereto the following:—

And it shall be the duty of magistrates and persons in authority, to verify and recognize the proceedings of all meetings of the people holden for that purpose, to the end that the will of the majority may be ascertained and obeyed by the constitutional authorities.

The question being taken on this amendment, it was not agreed to.

Mr. UPTON, of Boston, moved to amend the resolve, by striking out the words "1873, and in each twentieth year thereafter," and inserting in lieu thereof, the words "1858, and in each fifth year thereafter."

The question being taken on this amendment, it was not agreed to.

Mr. SARGENT, of Cambridge, moved to amend the resolution, by striking out the words "1873, and in each twentieth year thereafter," and inserting in lieu thereof, the words "1860, and in each tenth year thereafter."

The question being taken, upon a division, there were—ayes, 48; noes, 178—so the motion was not agreed to.

Mr. COLE, of Cheshire, moved to amend the resolution by striking out, after the word "Constitution" in the tenth line, the following words: "in conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of delegates of the people, for the purpose of revising the Constitution," so that the resolution, as amended, would read as follows:—

*Resolved*, That it is expedient to provide in the Constitution, that a Convention to revise or amend this Constitution, may be called and held in the following manner. At the general election which shall be in the year eighteen hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes to be received, counted, returned and declared, in the same manner as by law is provided in the choice of general officers at such election; upon the question, "Shall there be a Convention to revise the Constitution?" and if it shall appear, by the returns made, that a majority of the qualified voters throughout the State, who shall assemble and vote thereon, are in favor of such revision, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly, &c.

The question being taken upon the amendment, it was not agreed to.

Mr. HALE, of Bridgewater, moved to amend the resolution, by striking out the last clause, as follows:—

The foregoing provisions, shall in no wise restrain or impair the reserved right of the people in their sovereign capacity, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

And inserting in lieu thereof, the following :—

And the right of the people at all times, to amend their Constitution of Government, by Convention, or otherwise, according to their will, legally expressed, shall never be restrained or obstructed in this Commonwealth.

Mr. PARKER, of Cambridge. As the order which has been adopted precludes farther debate, I will ask whether the Chair gives the privilege of inquiry for the purpose of ascertaining construction? If I may be allowed, I wish to make an inquiry as to the effect of the amendment which is proposed by the gentleman for Wilbraham; but if not, I must reserve my inquiry until the next stage.

The CHAIRMAN. The Chair thinks that no debate will be in order.

Mr. PARKER. If no debate is in order, I desire to know whether that precludes an inquiry?

The CHAIRMAN. It depends very much upon what the inquiry is.

Mr. PARKER. The inquiry relates to the construction of the amendment—the effect of it.

The CHAIRMAN. The Chair thinks that would lead to debate, as it would require an answer.

The question being then taken on the amendment proposed by Mr. Hale, it was not agreed to.

The question then recurred on the amendment of Mr. Hallett, being to substitute his resolution as modified, for the resolutions reported by the Committee, and the resolution was read.

The question being taken, on a division, there were—ayes, 158; noes, 101—so it was agreed to.

Mr. BUTLER, of Lowell, moved that the Committee rise, and report the substitute to the Convention, with a recommendation that it ought to be adopted.

The motion was agreed to.

The President *pro tem.*, having resumed the chair of

THE CONVENTION,

The chairman, Mr. Griswold, for Erving, reported that the Committee of the Whole had had under consideration the Report of the Committee and resolves on the subject of amendments to the Constitution, and that they had instructed him to report the same back to the Convention, with amendments. The Committee of the Whole had amended the Report, by striking out the second resolution, and, afterwards, by substituting another in lieu of the remaining resolutions.

The question was first stated on concurring with the Report of the Committee of the Whole, to strike out the second resolution, as follows :—

*Resolved*, That it is expedient farther to provide in the Constitution, that, whenever the legislature shall fail to submit to the people, at the periods designated in the foregoing resolve, the question of calling a Convention for the purposes indicated therein, the qualified voters in State elections, in the several cities and towns, may, at the next general election thereafter, and upon notice of such failure by the Secretary of the Commonwealth, whose duty it shall be to issue such notice, proceed to vote upon said question as though it had been propounded by the legislature; and if, upon a return to the Governor and Council, of the vote so given, it shall appear that a majority have voted in favor of the proposition, the Governor shall forthwith issue his proclamation, calling upon the voters of said cities and towns, at meetings legally warned for that purpose, to elect delegates to such Convention; the time and place for holding its session, being expressed therein.

The question being taken, the amendment of the Committee of the Whole was concurred in.

The question was then stated, on the next amendment reported from Committee of the Whole, being to strike out all the resolves reported by the Committee on Amendments and Enrolments of the Constitution, and to insert in lieu thereof, the resolution submitted by Mr. Hallett.

Mr. BRIGGS, of Pittsfield, moved to amend the amendment, by striking out the following words in the tenth, eleventh, twelfth, and thirteenth lines, viz.: "In conformity to the provisions of the Act of 1852, chapter 188, relating to the calling a Convention of delegates of the people for the purpose of revising the Constitution," and also, by striking out the following words at the close of the same paragraph: "same manner and with the same authority as is provided in the second, third, and fourth sections of said Act," and inserting in lieu thereof, the following: "manner to be provided for by the legislature, to be chosen at said election," so that the latter part of the paragraph, as amended, would read as follows :—

And, thereupon, delegates shall be chosen on the first Monday of March next succeeding, in conformity with the law then in force for the election of representatives, and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding, in the manner to be provided for by the legislature, to be chosen at said election.

Mr. BRIGGS asked for the yeas and nays on this amendment, and they were ordered.

Mr. UPTON, of Boston. The Convention seem to have determined to adopt this substitute which was introduced by the gentleman for Wilbraham;

and although I had the honor to be a member of the Committee which reported the original resolutions, the chairman of which is not now in his place, I do not propose to inflict any speech on the Convention. I should have liked to have referred, for the information of the Convention, to the Constitutions of several of the other States, in regard to this subject; and principally for the purpose of showing to this body, that it is proposed to insert into the Constitution of Massachusetts—if the amendment of the member for Wilbraham is adopted—something which is contained in that of no other State in the Union. The Report of the Committee, which I hold to be better than the substitute, states the question to be proposed to the people: "Shall there be a Convention to revise the Constitution, and amend the same?" That is the simple question to be submitted to the people; and the other matter of fixing the proper basis of that Convention, is to be left to the legislature; and I appeal to the members of this Convention, whether it is not best to leave the basis to the legialature. Whenever it is determined that it is necessary to call a Convention, the legislature for the time being may submit the question to the people: "Shall there be a Convention to revise the Constitution, and amend the same?" They will also have the power to put the question of basis, which they might do in two forms, thus: Shall the delegates to the Convention be chosen in the same manner; that the then existing House of Representatives is chosen; or shall the delegates to the Convention be chosen by districts made by dividing the senatorial districts, by a representation, in one word, of the people of the Commonwealth, and not of town corporations, for the purpose of revising the Constitution of the Commonwealth? That is the question, and that is the whole question. The Report of your Committee covers that ground, and it also covers another ground—that is, in regard to future Conventions, whether you shall have a representation of town corporations, and town corporations merely; whether one-fourth part of the people of this Commonwealth, representing a majority of the House of Representatives shall say, that hereafter in this Commonwealth, no Convention shall ever be called, unless they give their free will and assent to the same; or whether the matter shall be left to the whole people of the Commonwealth to decide, through a majority of the people, represented by a majority of the legal voters of the Commonwealth. That is the question. And when my friend from Michigan undertakes to tell us what the State of Michigan did, why did he not tell us that the representation in that State is by the people assembled in districts? I say, Mr. President, that as a delegate in this Convention, I am ready to meet that question, and I am ready that our Constitution shall be amended so as to have the question submitted every year to the people: "Does our Constitution need amending?" And, if they decide it does, let a delegation of the people—not a delegation of the town corporations of the Commonwealth—but a delegation of the people of the Commonwealth, here assemble and prepare the necessary amendments. I say, Sir, that the Report of your Committee covers the democratic ground, and the only democratic ground; it leaves the question open, to be submitted to the people. First, submit the question, whether a Convention shall be called; and then, what shall be the basis upon which your delegates shall be chosen? But, if it is proposed to say to the people of this Commonwealth, that the delegates to that Convention shall be chosen on the basis of the House of Representatives, and on that basis only, then it will not be a Convention called on democratic principles, but it will be a representation of town corporations, and not of the people. As a member of the Committee, I feel bound to define my position, and having done so, I take my seat.

Mr. BUTLER, of Lowell. I am sorry, Sir, that the gentleman from Boston should have undertaken to have started off upon the idea that this was a foregone conclusion, and that it really was a case for the exhibition of heat and temper, rather than the exhibition of argument. He spoke so rapidly, under his excited feelings upon the subject—and doubtless he was well excited in view of the tremendous consequences which he foresees—I say he spoke so rapidly, that I somewhat doubt whether I exactly understood him. If, however, I did understand him, it was to this effect: that if we pass this amendment as it came from the Committee of the Whole, we shall provide that the Constitution shall be hereafter amended by the towns; in other words, that the towns are to elect delegates to any future Convention which may be held. If that is really so, it would be a pretty strong argument, I grant; and I think the Convention would go with him. If he really thinks it is so, I do not blame him for the heat which he has manifested. I should get hot myself; I should warm up considerably, if that were the case. But, the difficulty is, that the gentleman does not seem to have read the provision with due care. It provides that in each twentieth year the question shall be submitted to the qualified voters of the State, whether we shall have a Convention in a certain manner, to revise the Constitution; and if they say that we shall,

then the delegates shall come together on the basis of representation, as it shall then be established. Well, Sir, if the people in the mean time shall have thought that the basis is an unjust one, they will undoubtedly adopt another basis—perhaps the district system.

Mr. UPTON. I will ask the gentleman whether, by this amendment, whenever a Convention shall be called, it will not be called upon the basis which we now establish; and whether that is not a basis of town representation, and not a representation of the whole people of the State?

Mr. BUTLER. It will undoubtedly be called upon the basis which we have now made. It will be submitted to the qualified voters; and if they should, in the mean time, say that this system of town representation is so intolerable as not to be borne, they will, undoubtedly, propose to change it, and refuse to endure it any longer. Then the delegates will come together, and the majority of the whole people will alter the Constitution. Town delegates may propose this or that; but unless it is a proposition which to the whole people seems necessary to be adopted, it cannot become a provision in the Constitution. How shall we stand then? The whole people will have adopted the Constitution, which cannot be altered but by the whole people. And now if the people should adopt this form of government, that form will stand till when? Why, Sir, till the whole people get ready to alter it. And if all the towns should agree but one, and that one town should contain a majority of the population, it cannot be changed until the majority in that town agree to it. It is a majority of the whole people. The gentleman shakes his head as if he did not believe it. I should like to know how it can be otherwise? You cannot have a Convention till the majority of the people say so; and when they do say so, then a Convention can come here and sit as long as we have done—very much too long, I fear, for the good of the Commonwealth—and then, after all, it is the whole people who must make any change in the Constitution.

Mr. UPTON. Will the gentleman from Lowell allow me one word?

Mr. BUTLER. O yes, Sir; a thousand, if you choose.

Mr. UPTON. I only mean to say, that by a corporate representation, you cannot get the opinion of the whole people through their delegates. It is a town system of representation, and not a system based upon population. That is what I mean to say. It provides that the delegates shall be chosen under a town representation, and not by the whole people of the Commonwealth.

Mr. BUTLER. The difficulty under which the gentleman is laboring, is, in the first place, that he mistakes the temper of the Convention for his own, [a laugh,] and in the second place, that he mistakes the fact, that the people live in towns. What is a commonwealth? It is not at one time a commonwealth, and at another time a town. A commonwealth is made up of towns. There is no commonwealth without towns. Strike out of existence all the towns, and there will be no commonwealth here. The difficulty of the gentleman is, that we do not provide, in some way or other, a district system of representation.

And now I have got at what the gentleman wished. When he made the amendment which seemed to me to be altogether more progressive than even that of my friend for Northborough, when he proposed that we should have a Convention in 1858, and every fifth year afterwards, I understand what he wants to get at; he is in hopes of getting some district system by which he can so alter the Constitution as to get a complete district system for all time to come. I saw what he was after—like the nurse that wanted to kill the child in her arms by stuffing it with sweet-cake. He professes to be conservative; but, Sir, I am a great deal more conservative than he is. He is one of the conservatives of the "Young American" people, while I am getting to be an "Old Fogy" on this question!

Sir, I see no difficulty in this matter whatever. We must make some basis of representation. The Commonwealth must be represented, and represented in a way which the Convention say is the proper one, or else the people will not be represented at all. If the amendment is adopted, and the Constitution accepted by the people, we shall then have a Constitution under which the people of the Commonwealth agree to live; and it will remain in that form until a majority of the people agree to alter it, and that is all there is of it.

Now, one word upon the amendment of the gentleman from Pittsfield. If I understood it, it is the same amendment which was offered by the gentleman from Cheshire, except that it provides that the legislature shall fix upon the manner in which the Convention shall be held.

Mr. LORD, of Salem. I desire that the gentleman from Lowell would allow me to ask him whether, if a Convention is called in 1873, there might not be just as many delegates as there are in this Convention, chosen from the same localities, whatever the population of these localities may be at the time? On reading carefully the proposition of the gentleman for Wilbraham, I think he will come to that conclusion.

Mr. BUTLER. I had thought so. It struck me in the same way that it seems to have struck

the gentleman from Salem, until I looked at it more carefully. It provides that "thereupon the delegates shall be chosen on the first Monday of March next succeeding, in conformity with the provisions of law for *then* electing members of the House of Representatives." I do not know that I quote the words exactly. I speak from memory; but that is the substance of the amendment, at any rate. It will be as "*then*" in force; so that it must be exactly as the House of Representatives is based in 1873, and every twenty years thereafter; and if there is anything wrong about this, the legislature will have a right, each year, to ask the people to call a Convention together, until they get it righted; so that if this great wrong has been done, which has excited my friend from Boston so much, he can get it righted by the people, between now and then.

Now, Sir, I was going to refer for a moment to the amendment of the gentleman from Pittsfield, who seems to have adopted the child of the gentleman from Cheshire, probably because he had none of his own. And what is it? It is a proposition that the legislature shall prescribe the mode in which the Convention shall be called. If the people agree that a Convention shall be called, then I believe that the legislature is to prescribe the manner in which it is to be called. I believe I have got it right.

Mr. BRIGGS. The proposition is, that it shall be held in a manner provided by certain sections of that law.

Mr. BUTLER. I want the Convention to see the exact difference between the two propositions. The proposed amendment provides, that after the people have called a Convention, it shall be held in such a manner as the *then* legislature shall provide. This proposition is to have a Convention in a given manner, whether the legislature are willing or unwilling; that we should have just such a body as this, always, of course, with more talent and ability, and temper, which they will get so much better twenty years hence; but we are to have just such a body, constituted and held just in the same way as this body is.

Now I understand this to be the radical difference between the two propositions: one of them puts into the fundamental law that the Convention shall be held without a reference to the actual powers that be, so that no question of license law, or fugitive slave law, or one law or another law, or presidential election; or so that no bolting out of a small faction, on this side or on that side; so that, in short, no extraneous influence can put an accidental majority into the legislature, which shall have any power to control the action of the people; so that the same thing shall never again be witnessed in this Commonwealth, which we saw here last winter; that it shall be among the things that were, never to be seen again—that of the legislature assuming the power to interfere with the whole people in regard to their Convention. That is the exact difference, if I understand it, between the two propositions. One is to provide, by the fundamental law, irrepealable, and not to be construed away by anybody, not to be touched by any legislature; such as cannot be interfered with by any legislature; in a Convention of the people, whenever they will it—to have, in *fact*, what we have now in theory, the *vox populi* second only to the *vox Dei*—that the legislature shall not interfere. That is just the difference which I wish to impress upon the Convention, and then I have urged all I wish to say upon the proposition of the gentleman from Pittsfield.

Now, I take it that every man who desires that the legislature hereafter may have power to interfere with the will of the people upon a call for a Convention, will vote for the amendment of the gentleman from Pittsfield. Every man, on the other hand, who desires that future Conventions shall be, as I trust and believe this to have been, above and beyond the reach of any legislative action, will vote for the proposition as it stands. Sir, it is quite plain that we can get here and express the will of the people without the interference of the legislature. Why do we want the legislature to tinker upon the matter? When the people have spoken and said that they will have a Convention, why do we want the legislature to prescribe the means, or to refuse to prescribe the means, by which it shall be held? Why should we give them the power to say: "You may have a Convention, but that Convention shall sit upon the top of the Hoosac Mountain, or underneath it, if you please." Why give them the right to say: "You shall have a Convention; but, if you do have it, you shall sit without any pay; you shall sit having about you the safeguards of the law. You shall have a Convention, but every one who comes to it shall come in a particular way, and be dressed in a particular uniform, and march through a particular line of sentinels, and come in at a particular door." Some gentleman near me whispers that no legislature will ever be so foolish as to do such a thing as that. Sir, to what extent the folly of the legislature may carry them, the gentleman from Salem and myself would not disagree in saying—on whatever else we might disagree—that that point was without a limit. We should probably disagree as to the side on which that folly would exist, but we should not disagree as to the fact that it might be without a

limit. I should be of opinion that the legislature which would coolly discuss the basis of the regulations under which delegates should be chosen—and I will commend to the consideration of gentlemen here, the legislative caucus of last winter, where the question of complying with the people's will was discussed, and only defeated by a majority of five—I say, after that, no man can say to what extent the folly of the legislature may go, and we are only to put safeguards about it. Suppose that five had voted the other way, where should we have been now? We should have been sitting here, but under the strong hand. I do not wish to leave anything to the future legislature, and, therefore, I am constrained to vote against the proposition of the gentleman from Pittsfield, (Mr. Briggs).

Mr. LORD. When I arose to make the inquiry of the gentleman from Lowell, I was not aware that the proposition had been modified, and I agree with him, that with that modification, the representation in the Convention would be according to the basis of representation existing at the time when the Convention would be called. But it becomes us to look and see what that basis is. Is that a representation of the people as it now stands? Now, Sir, we have adopted a mode of representation in the House of Representatives, and that plan would not have been carried, in my judgment, except for the plausible speech of the distinguished delegate who represents Berlin, (Mr. Boutwell). It was put in that speech, that this was not a representation of the people, but that it was a representation, to some extent, justified as a compensation for the mode of fixing the basis of the Senate; that the Senate should have been based upon legal voters, instead of being based upon population; and that being the case, it became necessary to make the House of Representatives such—no, I will not do the gentleman for Berlin the injustice to say it, because he did not undertake to justify it upon that ground—but he said it was not quite so bad, considering that it might be looked upon as a compensation.

Now, Sir, the great question which presents itself to us here, is this: shall we, by a constitutional enactment, provide that the next Constitutional Convention which is called, shall not be composed of persons who shall represent an equal proportion of people? Shall we provide here in the Constitution, as matter of fundamental law, that the people of this Commonwealth shall not be equally represented in the Constitutional Convention? That is the question. There is no man that pretends that the people are equally represented in the House of Representatives, upon the basis which we have fixed. Now, shall we say, as a matter of constitutional law, that when the people speak, they shall send delegates who do not represent the people equally? And, Sir, I I want to know, with that amendment adopted —and I think it will require the astuteness, not only of the gentleman from Lowell, (Mr. Butler,) but also that of the gentleman for Wilbraham, (Mr. Hallett,) to tell me—what representation those sixty-four towns are entitled to in that Constitutional Convention, when they are not entitled to half a representative each in the House of Representatives?

Mr. SIMMONS, of Bedford, (in his seat). Entitled to somebody here half the time.

Mr. LORD. The gentleman near me says they may have somebody here half the time.

A VOICE. Six-tenths of the time.

Mr. LORD. So it is. I accept of the amendment. We are providing here, not by hasty legislative act, a fundamental law which shall fix the basis upon which all future Conventions shall be called; because, Sir, I submit that no Conventions can be called hereafter, except by force and violence, unless it is called according to that basis to which I have referred; for the very provision which says that the legislature may call a Convention in other years besides the years which the Constitution provides, says, also, that it shall be called in the same manner, and upon the same basis. Therefore, you can get no law through the legislature, except in violation of the Constitution, that does not provide that the people shall not be equally represented in a Convention, which undertakes to report a constitutional amendment to the people. And, Sir, the argument which the gentleman from Lowell makes, that there is no Convention to be called without a majority of the people in favor of it in the first place, and no amendment to be adopted unless a majority of the people concur in it afterwards, is of no force whatever; because, if that has any force, why not say that the county commissioners of the county of Berkshire shall have the power, in the first place, of submitting amendments to the people, because, unless the people choose to ratify them they do not become a part of the Constitution? The difficulty is, we cannot get an amendment before the people, if you make a constitutional provision which does not provide for an equal representation of the people. How else can we get amendments before the people? The people of this Commonwealth this day demand equal representation; but they cannot get it, and why? Because the people are not equally represented here. Should every man in it, from every quarter of this Commonwealth, demand equality of representation, you will not let them vote upon that

question. Why? Simply because you do not represent the people. The majority of this Convention is chosen, as every-body knows, and as has been charged over and over again, by a third part of the legal voters of this Commonwealth. Then, how are the people to amend the Constitution, if you are not to allow them to speak in Convention?

Now, Sir, it is pretty unimportant, in my judgment, whether the gentleman from Lowell, (Mr. Butler,) and myself, think the legislature will act foolishly or not. I think, as Constitution makers, we are bound to presume that future legislatures will act according to the Constitution; we are bound to presume that the people will select such agents and such representatives as will properly carry into effect their views. I have no such distrust of the people as to suppose that they will send up here representatives who will not conform to their will. If they do, the evil is only temporary, because the same constituency which sent them up, can instruct them while they are here,—unless we have taken that good old provision from the Constitution, and I hope we have not,—and if they do not like their doings while they are here, they can send others to take their places. Now, I say, it is entirely unimportant how gentlemen who will be so little known in 1873, and so little cared for at that time, as the gentleman from Lowell, (Mr. Butler,) and myself, think the legislature will manage if they have the power. I do not, however, propose at all to enter upon the discussion of that point.

I think, Sir, if our fathers had told us, in 1820, that we should not have had a Convention unless we had delegates chosen just as they should prescribe, that once in a while we should hear it said that it was not in the power of one generation to undertake to bind down and enchain their successors and posterity to all future times. I think it would have been said here, and said with a great deal more force, and certainly with a great deal more truth, than many things which have been advanced here politically, that if they had undertaken to say that when the people chose, through their constituted organ, to select a Convention to revise the Constitution, they had not the power to say how they should be represented. That would have been a "fossil," indeed, which thirty years ago should have undertaken to say to us of to-day, that we should not have a Convention unless we should stick to the old property qualification in the voter and in the delegate. Suppose, in 1820, that the Convention had said, that hereafter no Convention should be called, except by a majority of those voters who had a freehold estate, should not we have called that a "fossil"? that they had undertaken to bind their successors, and that they had no such power?

Sir, I do not profess to be remarkably progressive, but I hold that in making a Constitution, we should exercise such powers as we have; not only to make a Constitution which shall meet the exigencies of the day, but one which, according to human judgment, and so far as we can bring human foresight to bear upon it, shall meet the exigencies of the future. But to undertake to say that our successors, when we are slumbering, and the mould "shall have gathered upon our memories, as it will have gathered upon our tombs," shall not have a Constitutional Convention, or a Constitution, unless they take them according to the opinions of those who, living in 1853, profess to be wiser than those who may come after them, is, in my opinion, a great mistake. I am willing to declare that the people have a right to have a Convention. There is no difficulty in the people's having a Convention when they want it, and there is no difficulty in putting that into the Constitution.

Mr. PARKER, of Cambridge. I proposed, while this subject was before the Committee of the Whole, if it had been in order, to make an inquiry for the purpose of ascertaining the true construction of the proposed amendment. Having no opportunity at that time, under the rules, I desire now to call the attention of the Convention to it as adopted and reported by the Committee, with the same view. It provides that in 1873, and in every twentieth year thereafter, the question shall be submitted to the people "Shall there be a Convention to revise the Constitution in conformity to the provisions of the Act of 1852, chapter 188, relating to calling a Convention of delegates of the people, for the purpose of revising the Constitution?" That is the question which is to be submitted to the people, and upon that their vote is to be required. If they vote in the affirmative, then there are certain other provisions.

Now, Sir, the Act of 1852 contains, among other things, a provision that in case the answer shall be in the affirmative, the inhabitants of the Commonwealth, "*now* entitled" (that is, entitled in 1852,) in any one year to send one or more representatives to the general court, shall, on the first Monday of March, &c., elect one or more delegates, not exceeding the number of representatives to which each town or city "was entitled in the last year," (that is, in 1852); and it provides "that at a meeting of the inhabitants for that purpose, every person entitled to vote for representatives in the general court, shall have the right to vote in the choice of delegates;

and the same officers of the several cities and towns shall proceed in such election, as they *now* proceed in the election of representatives to the general court, and that the votes shall be received in the same manner as *now* provided in case of representatives to the general court; and that the same laws *now* in force regulating the duties of town and city officers, shall apply and be in full force and operation as to all meetings held under this Act," &c. The inquiry which I wish to make is, whether, as a matter of legal construction, if this question is submitted to the people, and they answer in the affirmative, they will not have responded that the Convention should be called precisely according to the terms, and under the terms of the Act of 1852; whether all the provisions of that Act, and all the references made by that Act, to other laws in force at that time, will not become stereotyped, and be part and parcel of the Constitution, so that reference must be made to them in 1873, and in every twentieth year thereafter, in order to ascertain how the delegates are to be chosen, and their number, and the laws which shall govern their election? If I understand the true construction of this clause, it makes all the provisions of the Act of 1852 a part of your constitutional law upon this subject, and more than that, it makes all the acts referred to in that Act—all the existing laws which were in force for the election of delegates to this Convention—also a part of the Constitution; so that sixty, eighty, or one hundred years hence, if this clause shall still remain, the people must refer to the Act of 1852, and hunt up the laws then in existence to which that Act refers, before they can know how to proceed in calling their Convention. Well, Sir, as this amendment was originally submitted by the gentleman for Wilbraham, all the proceedings were to be in perfect conformity with that Act. It provided that if the people voted to call a Convention, the delegates should be chosen on the first Monday in March, next succeeding, and that they should meet at the State House, on the first Wednesday of May next succeeding, in the same manner and with the same authority as is provided in the second, third and fourth sections of said Act—that is, according to the provisions of the Act of 1852.

But the proposition was modified afterwards in Committee, and another provision inserted, which is substantially this:—

Thereupon, delegates shall be chosen on the first Monday of March next succeeding, *in conformity with the laws then in force for the election of representatives.*

Now, Sir, I wish to know how far this provision will or will not be in conflict with the question put to the people, and answered by them? Will the election, if made in conformity with the laws then in force for the election of representatives, be made as the people have willed that it shall be done, by answering the question submitted to them in the affirmative? If it will not, then these two provisions are in conflict with each other. The people say they will have a Convention according to the Act of 1852, with all its references to other acts then in force; whereas a subsequent part of the same proposition requires that the Convention shall be called, and delegates chosen, in the manner then provided for the election of representatives.

If there be this conflict, then I would inquire which part is to stand? Is a construction to be put upon the question submitted to and answered by the people, to make it conform to this subsequent provision, or is a construction to be put upon that subsequent provision, to make it conform to the question?

But there is something more here which seems to me to need explanation. This modification which has been inserted, makes the latter part of the provision read in this way:—

And, therefore, delegates shall be chosen on the first Monday of March next succeeding, in conformity to the laws then in force for the election of representatives, and such delegates shall meet in the State House, on the first Wednesday of May succeeding, in the same manner, and with the same authority, as is provided in the 2d, 3d, and 4th sections of said Act.

Now, can this provision stand with all its parts, in consistency with each other, or is the first portion of it, which was originally drawn in conformity with the question to be put to the people, in conflict with the modification which has been made, so that the election of delegates must be in accordance with the then existing laws, and yet in conformity with the Act of 1852?

Again, the first part of the amendment provides that, "at the next general election which shall be in the year 1873, and in each twentieth year thereafter, the qualified voters shall give in their votes," &c. Now, the qualified voters in State elections, according to the provisions which it is proposed to incorporate into the Constitution at this time, will not be, or may not be, persons of the same description as those who were the qualified voters in 1852. If the amendment which you have already adopted is ratified, the payment of a tax will not be required to qualify a person to vote. This amendment will, therefore, provide that one set of voters, all persons qualified

by residence, &c., whether they have paid a tax or not, may vote upon the question: "Shall there be a Convention held according to the provisions of the Act of 1852?" But, in the choice of delegates, the election being according to the provisions of the Act of 1852, and the laws then in force, another set of voters, those only who have paid a tax, can vote. So that you will submit to one class of men the question whether a Convention shall be called, and to another class of men, the choice of delegates to the Convention.

These are questions of legal construction, and before the Convention proceeds to make this proposition a part of the Constitution, they should be satisfactorily answered.

Mr. BIRD, of Walpole. I have not much to say upon the subject before the Convention, except that I shall call for a division of the question when the vote is taken. I am willing and desirous to vote for the first proposition of the gentleman from Pittsfield, (Mr. Briggs). I do not like to vote against the proposition of the gentlemen for Wilbraham, (Mr. Hallett,) because I generally agree with him upon matters of democratic principle, but I am not willing to incorporate into the fundamental law of the Commonwealth, a provision which shall bind the people in 1873 in relation to the details of calling a Constitutional Convention. The Act of 1852 worked very well last year; it might not work so well twenty years hence.

In relation to the other part of the amendment presented by the gentleman from Pittsfield, I hope it will be withdrawn, or if it is not, that it will be rejected. I understand the gentleman is not particularly tenacious about retaining the latter part of his proposition, and I would, therefore, suggest that all after the word "succeeding," be stricken out. That clause of the proposition would then read:—

And thereupon delegates shall be chosen on the first Monday of March next succeeding, in conformity with the existing laws, in relation to the House of Representatives; and such delegates shall meet in Convention in the State House on the first Wednesday of May succeeding.

I would omit the remainder of the paragraph. It will then provide that the question of calling a Convention shall be taken every twenty years; and if there be a majority of the people of the State in favor of calling a Convention, then the delegates shall be chosen on the first Monday of March next succeeding, and they shall meet in the State House the first Wednesday of May next succeeding.

Gentlemen may say that with the proposition left in this shape, the legislature in the mean time, then in session, may pass acts virtually repealing the calling the Convention, or such as will render their meeting extremely difficult. Now, Sir, I have no fear of that. I believe that when we have provided in our organic law that the question shall be submitted to the people, whether there shall be a Convention called, and when a majority of the people have voted in the affirmative, no legislature will be found to contravene the will of the people. I do not think we need make any provision to prevent it. Certainly, while the memory of the last legislature lives, no future legislature will try the experiment. I therefore hope the first part of the amendment of the gentleman from Pittsfield will be adopted, and the last part stricken out.

Mr. HALLETT. In regard to the suggestions made by the learned gentleman from Cambridge, (Mr. Parker,) I am very glad he has shown that by applying his astute mind to the criticism of this proposition, it results in producing nothing against it. If the learned gentleman were now upon the bench, and a question of the constitutionality of this provision should come before him, and no stronger reasons could be adduced to prove its invalidity than he has suggested against the proposition, he would have too much respect for public sentiment and for justice, to decide otherwise than in favor of its fair construction. He objects, very technically, that there is something said in the Act of 1852, about the laws "*now*" in force, and, therefore, the construction must apply to the laws in force in 1852. Why, Sir, he might just as well have gone back to the Act of 1820 for holding a Convention, for there was something said in that Act about the laws "now" in force. In this resolution now under consideration, it is provided that the election of delegates to a Convention in 1873, shall be carried on in conformity with the laws "*then*" in force. That construes and applies the law to 1873. The Act of 1820 is the same—verbatim, almost—as that of 1852, which has answered every purpose now, after a period of thirty-three years; and yet when we talk of using it for twenty years more to call Conventions, in the same general manner, gentlemen try to terrify us by apprehensions of binding the people to carry into effect in 1873, a law of 1853.

The learned gentleman from Cambridge, (Mr. Parker,) represents these provisions, the law of 1852, and the contemplated action of 1873, as being in conflict with each other, and wants to know which we will take. I can see no difficulty or doubt in the matter. I should like to ask any judge upon the bench, whether, if he had a statute

before him declaring that such a thing should be done in accordance with the law "*now*" in force, that is, in 1820 or 1852, and also a plain constitutional provision before him, saying that the same thing shall be done in accordance with the law "*then*" in force in 1873, which he would take, the "*now*" of 1852, or the "*then*" in the constitutional provision? I think it is too plain to need an explanation.

The rule of construction is, that the Constitution is the paramount law, and is to be so construed as to carry out the will of the people, as the law-making power expressed in their Constitution, and to make all the provisions of law conform to that. Now, what do we propose to enact in this provision? Simply a constitutional provision by which the people can hold a Convention, without being tied down to ask the consent of the legislature, subject to the arrogant assumption that the legislature can repeal the law calling a Convention, and send the delegates home. I have studied this subject for ten years. Its importance in elementary government, cannot be over estimated. Have other gentlemen, who object here, studied it? If they have, let them show me that they understand it, and mean to guard the rights of the people against the usurpations of a legislature, and I will take their opinions. It is a very important matter, I admit; but I cannot see the judgment or propriety of gentlemen who have scarcely spent a thought upon the subject, endangering so great a protection to the people, by hasty suggestions, all of which go to take this inherent power away from the people and give it to the legislature. If they have examined it,—and they are just as capable of examining it as I am,—I am willing to defer to them; but if they have not examined a question so delicate and difficult, they are no more competent to point out what should be done, than they would be to navigate a ship to California, without having studied the art of navigation for an hour.

As regards this technical question of construction, I apprehend no man who desires to secure the object I have in view, will fairly, soberly, and honestly, have a moment's difficulty with regard to it. The only question before us is, will you so amend your Constitution as to provide a fundamental organic law for holding Conventions, which executes itself, without the aid of the legislature; or will you lay down the principle that the people can amend their Constitution only through the previous consent of the legislature? That is precisely the question upon which we are called to act. And here is the basis of a provision for the new Constitution, that will execute itself without the aid of the legislature; and I undertake to say, the people, when they want another Convention in twenty years, will find no difficulty at all in construing it. None whatever. Let me assure those who are sincerely in favor of the rights of the people in this respect, that they will find no difficulty from the lawyers, and none from the judges, when we once get it into the Constitution; but before we get it there, all manner of troubles, and all manner of doubts, and all manner of technicalities, will be thrown in the way of its adoption by the Convention, and by the people. I never knew or read of an instance where the people were struggling to get back their lost rights, either through a Constitution, a legislature, or a government, in this country, or under the despotisms of the old world, but there were found lawyers who fear the ignorance of the people, and were always interposing difficulties, raising technicalities, and placing every possible inconvenience in the way, until the people have, in many instances, become alarmed, or embarrassed, and been driven from their rights. I conjure the friends of the great rights of the people in this Convention not to be alarmed at the difficulties which have been attempted to be thrown around this provision. I tell them there is no difficulty in relation to the matter at all. The simple, plain proposition, is, that the towns which are entitled to send representatives to the general court in 1873, if the people of the Commonwealth decide to hold a Convention, will elect delegates to the Convention in conformity with the law then in existence for the election of representatives. The resolution of amendment says: "in conformity with the law *then* in force," and whatever is the law then in force with regard to representatives, it will apply to delegates to the Convention. I should like to extend it still farther, but that might fail; and if it is not explicit enough, you may add the basis in the year when the valuation of estates was last settled.

The same idea is already twice expressed in the amendment; but in order that it may be so explicit that no lawyer can give it a wrong construction, I propose, at a proper time, to offer this amendment, or what is equivalent to it. I think the construction is perfectly clear as it now stands, and I can see no reason for anything farther. But I would omit the reference to the Act of 1852, and incorporate all the powers of the Convention, which is the same thing, even if it should take up a dozen pages in the Constitution, for the purpose of securing the rights of the people, rather than that those rights should be lost, and the calling of a Convention be placed in the power of the

legislature, for want of a proper construction of the Constitution. I want it to be so explicit that there can be no getting round it; for if we fail now, there will be no meetings of the people in Convention for generations to come. I want the people should have the power of amending their own Constitution as they may see fit, without doing it—as the United States court has declared they must—with a rope round their necks. Our Bill of Rights says that "the people alone have an incontestible, inalienable, and indefeasible right to institute government, and to reform, alter, or totally to change the same." Now, Sir, that is a fundamental right which overrides all limitations upon the part of the people, and I want to make provision in this Constitution so that they may exercise it; for it amounts to nothing more now, as the supreme court of the United States have evasively decided in the Rhode Island causes, than simply saying that the people may do it, if their legislature and their court, and the president of the United States will let them; but if they undertake it without the consent of their rulers, they are to be hanged as rebels.

The gentleman from Cambridge says that if we insert this provision in the Constitution, we deprive the people of the right of amending their Constitution in the way they would like hereafter; when he knows that means they cannot amend it without a law; and thus he joins in that very cry which has come to us from the supreme court of the United States, from federal lawyers, from every man opposed to the practical sovereignty of the people, who has taken up this subject, and who contends that the people shall not amend their Constitution without the legislature will give them permission! The gentleman says farther, "do not insert this provision, because you are undertaking to say what the people in 1873 shall do towards amending their Constitution!" But what can they do without it, according to his doctrine? If we do not incorporate such a provision into our fundamental law, he maintains, the United States court maintain, and all lawyers who deny the people's sovereignty in practice, hold, that at the first step the people take for calling a meeting for a Convention, or for depositing votes for delegates, the legislature has the power to pass an act declaring it a riotous proceeding; and the military, and the army and navy of the United States may be called out to put it down. Now, instead of the revolution of blood which the learned gentleman from Cambridge, (Mr. Parker,) allows the people as their only remedy, I want a revolution of peaceful change, when the people desire to reform government; and for the sake of securing that object, now denied by the judges and lawyers, I desire to see incorporated in the Constitution the amendment I have offered, or one to the same effect, for I go for the substance only.

For the sake of the present generation, for the sake of the reaffirmation of a great truth now denied, and for the sake of posterity, I hope it may be inserted in this Constitution as a fundamental law, and become a precedent for all people who mean to guard their inalienable rights against constructive usurpation.

Mr. PARKER, of Cambridge. I misunderstood the gentleman for Wilbraham, (Mr. Hallett,) or he misunderstands me. I certainly have given no indication of any wish to confound the people with technicalities. If that was my desire I should leave this provision to be adopted, and leave the people to be confounded in their attempts to ascertain its meaning. On the contrary, I desire if possible, that whatever provisions are inserted in the Constitution, shall be so free from technicalities that there will be no doubt respecting their meaning, and no difficulty in readily understanding them. I have opposed nothing, nor have I advocated anything. I rise merely for the purpose of pointing out for the consideration of the members of the Convention the language as it stands, and to inquire what construction is to be placed upon it; indicating, perhaps, the opinion that the response of the people to the question sent to them, if that is to be regarded as the effective thing in the calling of the Convention, will confine the number of delegates and the manner of choosing them to the mode provided by the Act of 1852; and then adding the inquiry whether there had been anything inserted in the proposition which provides for a different rule of representation; and if so, whether that was not contrary to the question submitted to the people, and their response, and to other provisions immediately connected with it?

The gentleman speaks of the Act of 1820, and says that the language of the Act of 1852 is identical with that of the Act of 1820. What of that? There is nothing in the Constitution referring to the Act of 1820, and it is not proposed to insert anything referring to that Act. The point of the inquiry is, what will be the effect of this provision referring to the Act of 1852, if inserted in the Constitution? The Act of 1852, as I said before, required the election in 1853 to be according to the provisions of the laws then in force. It has been contended here that the response of the people to the question in the Act of 1852, "Is it expedient that delegates be chosen?" &c., adopted all the provisions of that Act in such a manner, that whether regarded as a law or as a

"proposition," the legislature could not change them at all; that the response of the people gave life and efficacy to the Act; and that it was not in the power of the legislature to modify it. I contended that the legislature had such power, and power to repeal it, because it was but a law; and that the vote of the people being merely that it was expedient that delegates should be chosen without any declaration respecting time or manner, had no operation to change the character of the Act itself; and I am ready to stand by that opinion, notwithstanding all which has been urged against it.

But if this provision is made a part of the Constitution, the legislature cannot repeal or modify it; and if the question is put whether a Convention shall be called in a particular manner, and answered in the affirmative, the effect of that response may be conclusively to determine the mode and manner. Then comes the question, is the provision referring to the laws in force at the time, for the election of representatives, consistent with such a response? And farther, is that provision consistent with what is immediately connected with it, viz.: that delegates shall be chosen to meet in Convention in the same manner as is provided in the 2d, 3d, and 4th sections of the Act of 1852.

Mr. HALLETT. Does it say that they must be *chosen* in the same manner as by the Act of 1852? I will ask the gentleman if the 2d, 3d, and 4th sections of the Act of 1852 are inconsistent with this provision? whether they do not relate to the meeting and the powers of the delegates?

Mr. PARKER. The gentleman introduces another question of construction. The 2d section of the Act of 1852, has nothing in relation to the meeting of delegates in Convention, or their powers; and I think that it relates exclusively to the manner of their choice. I ask, then, whether the last part of the proposition, as amended, is consistent with itself; and whether the whole proposition must not be construed together in such a manner, that the elections will have to be made in conformity with the 2d section of the Act of 1852, and whether the new matter introduced, providing for conformity with the laws in force at the time, for the election of representatives, must not be rejected on account of its inconsistency with the other provisions. It only shows that we are involved still farther in difficulties respecting the construction and meaning of this proposition.

Mr. BRIGGS. I suppose the Convention will hardly take the vote upon this question to-night. I move, therefore, that the Convention do now adjourn.

The question was taken on the motion, and it was agreed to.

So the Convention adjourned until to-morrow at nine o'clock, A. M.

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SATURDAY, July 23, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at 9 o'clock.

Prayer by the Chaplain.

The journal of yesterday's proceedings was read.

*Report from a Committee.*

Mr. BATES, of Plymouth, from the Committee on Reporting and Printing, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention,* July 23.

The Committee on Reporting and Printing, to whom was referred the subject of reporting and publishing the proceedings and debates of this Convention, have considered the same and report: Inasmuch as much of the labor of printing, publishing and binding the Reports will not be completed until after the Convention shall have closed its labors, the Committee recommend the adoption of the following resolution.

For the Committee,

M. BATES, JR., *Chairman.*

*Resolved,* That the Committee appointed to superintend the publication of the reports of the debates and proceedings of this Convention, be authorized, in connection with the President and State Auditor, to allow the accounts for such service, and the Governor is hereby requested to draw his order on the treasury for the payment of the same.

The resolution was ordered to a second reading to-morrow.

*Judicial Tenure of Office.*

Mr. BUTLER, of Lowell. I ask leave to introduce a resolve, which I will move to refer to the Committee of the Whole.

The resolve was read as follows:—

*Resolved,* That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

Mr. BUTLER. The Convention having adopted a resolution that hereafter the term of judicial office shall be ten years, and having adopted another rule, to wit: that all judges now

in commission shall hold their offices for life, and as this Constitution cannot be adopted and go into effect until some future day, the office of the resolve which I have now introduced, is to do what must be done by design, or happen by accident, to wit: limit the term of office of those judges who may receive their commissions before the Constitution goes into effect. By a well-known rule of construction, the term would refer to the day on which the Constitution shall go into effect, or be ratified by the people, as for example, say the first day of January next. Now suppose that between this and the first day of January, three or more of the judges should die or resign; then, Sir, we must, as in the case of judge of probate, appoint some live young Whig, I suppose, who might outlive all of us. To avoid this, I propose this resolution; and I hope it will meet the concurrence of all those who wish to deal fairly in this matter. And now that I am upon this topic, let me say a word concerning the judge of probate for Essex County.

The PRESIDENT. The Chair must interrupt the gentleman. It is not in order to discuss the general question of the judiciary upon this motion, but only the propriety of referring this resolution to the Committee of the Whole.

Mr. BUTLER. I desire to show the necessity for the adoption of this resolution; and I intend to ask a suspension of the rule, so that, dispensing with the formality of sending it to the Committee of the Whole, it may at once pass to a second reading. And without meaning to say anything, of course, against the present judiciary, supposing they would do as all others would under like circumstances, I say, suppose either from accident, or necessity, or design, there should be a vacancy, and nothing should be done to alter the tenure of office while this Convention is going into effect, how would the matter stand? In one of the States of this Union, when an alteration was made in the Constitution of the State, which provided that the commissions of the then existing judiciary should expire, and that they should not be eligible to reappointment, but that new judges should be appointed to hold office for twelve years, an old and shrewd judge resigned his commission just before the Constitution took effect, so that he was no longer judge, and as soon as it went into operation he was reappointed, and had twelve years more added to his judicial life, and actually died in office.

Mr. HOPKINSON, of Boston. He must have been a Democrat.

Mr. BUTLER. I supoose he must have been for this reason, that he had all the qualities of mind to make a good Democrat, except, perhaps, honesty of purpose. He had great ability, and if he had had honesty, he would have been a good Democrat. I move you, Sir, that the rule be suspended, and that this resolution be put upon its second reading.

Mr. SCHOULER, of Boston. I do not know as I understand the intent or purpose of the resolution which has just been submitted by the gentleman from Lowell; and I desire to ask that gentleman, whether he intends to incorporate that resolution into the Constitution, or whether it is to be a law outside of that instrument? I should like to know if we have any right to make laws in this Convention? By the Constitution of the State it is required, that the Senate and House of Representatives shall make the laws; and as I understand this resolution to be no more nor less than a law, I want to be informed from what quarter this body obtains the power to act upon it? If the gentleman intends to incorporate it into the Constitution, it is another matter. I should like to hear the resolution read once more.

The resolution was accordingly read.

Mr. SCHOULER. I would inquire if it is not of the character of an *ex post facto* law? It does not propose any amendment to the Constitution,—for we have already acted upon that part of the Constitution, relating to the judiciary,—but is distinctly in the shape of a resolve, and must be acted upon as a law.

Mr. BUTLER. With a view simply of replying to the gentleman from Boston, I would say, that I have submitted this resolve to the best lawyers of the Convention, and they have been unanimous in the expression of their sentiments in its favor; and, if necessary, I will call on any one of those gentlemen to say, whether any such difficulty exists, as has been suggested by my friend.

The PRESIDENT. The Chair would inform the gentleman from Lowell, that all debate upon this question is out of order, although explanations may be allowed to be made.

Mr. SCHOULER. As I desire to examine this subject more particularly, I ask that the resolution may be placed in the Orders of the Day, for to-morrow.

The PRESIDENT. The question is on the motion of the gentleman from Lowell, to suspend the rules.

The question then being taken upon the motion to suspend the rules, it was, upon a division—ayes, 141; noes, 52—decided in the affirmative.

The question then recurred on the motion of Mr. Schouler, to place the resolution in the Orders of the Day, for to-morrow, and it was decided in the affirmative.

*Submission of Amendments to the Constitution to the People.*

On motion by Mr. CUSHMAN, of Bernardston, it was

*Ordered*, That the Committee on Reducing Amendments to the Constitution to a suitable form to be submitted to the people, be requested to prepare an Address to the people to accompany the Revised Constitution.

*Orders of the Day.*

On motion by Mr. GRISWOLD, for Erving, the Convention proceeded to the consideration of the Orders of the Day, the first item being the subject of

*Amendments to the Constitution.*

The pending question being on Mr. Briggs' amendment to the amendment of the gentleman for Wilbraham, (Mr. Hallett).

Mr. BRIGGS, of Pittsfield. I said, last evening, when I moved an adjournment, that I wished to say a few words upon this subject; and I now embrace this opportunity of presenting a few thoughts for the consideration of the Convention, assuring them that I will occupy but a few minutes of their time. The gentleman from Lowell, (Mr. Butler,) and the gentleman for Wilbraham, (Mr. Hallett,) said, that the issue presented upon the amendment I offered, was this: whether the question should be left open without any provision, as to the manner in which the Convention should be called, the manner in which it should be conducted, or whether we should settle these matters. I agree with these gentlemen, so far as my proposition is concerned, that this is the precise point, and they met that point manfully and directly in their arguments. As to the character of the existing law of 1852, its meaning, and the construction which should be given to it, the gentleman for Wilbraham, (Mr. Hallett,) and the gentleman from Cambridge, (Mr. Parker,) differ widely. Then let me ask in the outset, would it be wise to incorporate into the Constitution a law about which legal gentlemen upon this floor differ, and which is to be binding upon the people in all future time? I do not dispute that it may be right to provide, in the most general, clear, and positive terms, that the legislature hereafter may yearly, if they please, submit the question to the people; and that once in twenty years the people shall, without the interference of the legislature, vote directly upon the question whether they will have a Convention or not; but I do not think it wise or just, that they shall be compelled to vote, whether they will have a Convention or not, formed in a particular way, under a law which has been made by a legislature years and generations past; and that they shall not be left themselves to make their own provision, through their own legislature, chosen by themselves. I do think, as I said before, that it infringes upon that great right which the gentleman for Wilbraham is so anxious to preserve; and it confines the people down to a particular form in which they shall vote upon the question of calling a Convention. It says to them, you may have a Convention if you choose to vote for having it called in a specified manner, and under a law regulating the particular mode in which that Convention is to be organized. It seems to me if gentlemen will reflect upon the subject, they will see, that it is infringing upon the rights of those who are to follow us. It is placing chains and fetters about them so far as the mode of calling a Convention is concerned, and so far as concerns all the steps which the legislature must take in regard to it. Is it right so to do? The amendment I have offered, proposes to leave this subject open. It proposes to do substantially, what the Report of the Committee proposes to do. I say while I prefer my own amendment, or that of the gentleman from Cheshire, (Mr. Cole,) to the other amendments which have been offered, I should much prefer to take the resolutions reported by the Committee, which it seems to me, present the matter clearly, distinctly, and simply, of submitting the question to the people, whether they will have a Convention; and if they decide to have it, a legislature chosen by themselves shall pass all the necessary measures in order to carry out that expression of the people.

Then, Sir, as I said before, I do not understand precisely what my friend for Wilbraham means by that portion of the Bill of Rights which he has appended to his proposition. He says, in reference to my reading of the Bill of Rights here, that I seemed to have overlooked the fact that that Bill of Rights furnishes no means for carrying itself out. What does his amendment do? It provides two modes in which the people may have an opportunity to vote on the question of calling a Convention; a specific mode for calling a Convention, and then it declares that this shall not be an infringement of that reserved, sovereign right, which the people have to alter, amend, or change their form of government as they please.

Well, Sir, if he means by that, that it shall be an effective, operative proposition, what is it? He has provided two modes for calling a Convention, and then declares that shall have no effect whatever; that the people are not bound by it.

They may regard, or disregard it. They may rise up in their sovereign capacity, and constitutionally too, and amend the Constitution in any manner which they see fit. As I have often said, I believe in the sovereignty of the people, in their right and power to do as they please; and those people have a right to make a Constitution, and when they have made that Constitution they are bound, all the people of the State are bound by the Constitution which they make, until it shall be altered, changed, or abolished, in just such a mode as they shall provide that it may be altered, changed, or abolished. Is this an infringement of the sovereignty of the people? Sir, what do you want of a Constitution? It is, to be sure, to provide a government; but that government is to make laws, and those laws are to bind the people who have made the Constitution, and who will be the law-makers. And all the people, as well as every individual of the people, are bound by the laws made in conformity to the Constitution, are bound by that Constitution itself, which they have adopted and confirmed. And, whenever the people, whether in a republican government, or a despotic government, take the matter into their own hands in a way not provided in the Constitution, and undertake to change the Constitution, whether by the peaceable mode of the ballot-box, or amidst the clash of arms, it is a revolution. And, whenever the people choose to have a revolution, they may have one if there are enough of them to carry it through. But, we propose to do things differently; we are a constitutional people as well as a free people.

Now, Sir, the proposition of the gentleman provides, that the *legal voters* shall, at stated periods, express their wish upon the subject of a Convention; but his last proposition is, that the *people*, whenever they please, may as they please, amend, change, or abolish their government. Does he mean by that clause the legal voters, or does he extend his proposition farther, and go with my young friend who spoke yesterday, (Mr. Burlingame,) and say that the people include every human being in whose bosom God has planted a rational and immortal soul?

Sir, the Rhode Island case has been referred to—a case in which my friend for Wilbraham has been once a legal actor, and which he has studied deeply, and made himself acquainted with the great principles of freedom applied to it. The Rhode Island case is precisely this: the legal voters of Rhode Island refused to alter their Constitution; but a large class of citizens of Rhode Island, from whom this privilege of voting was withheld by the existing Constitution, took it into their own hands, with a portion of the legal voters, to change their government; and they did it *pro forma*, and organized a government. That was the time when it was said, that the accidental president interposed against liberty, and in behalf of the existing government. That question was taken up to the highest tribunal in the land—and, let me tell my young friend, a Democratic tribunal—and they declared, what? They declared the great principle, that the regularly constituted constitutional government could not be overthrown, except through constitutional and legal means.

Now, suppose that the legislature intermediate between these two periods of twenty years, should refuse to put the question to the people, and that the *men* of Massachusetts, not the legal voters alone, but these thousands and thousands of foreigners who are daily coming in among us from the land of oppression and wrong, should take it their into heads to say, this is our home, we have come here to live, we do not approve of your naturalization laws; we are men, and the moment that we tread your soil we claim the right to participate in your government. Now, suppose a sufficient number of legal voters join with them to make a majority of the men of Massachusetts, and they should rise up in their majesty, and reform and alter our government, and take possession of it through their appointed officers. Would that be a legal government? Does the gentleman mean, by his declaration of rights, to embrace such a case as that?

Sir, another case has been alluded to, the case of Michigan. Little territorial Michigan undertook to form a State government—unlike anything which took place in Rhode Island. Michigan was a territory of the United States. Formerly the mode of forming a State government in a territory, was this: congress passed a law authorizing the people of the territory to choose their officers and organize a government. But in later times that ceremony has been omitted; and the people, self-moved, in these territories, chose their officers, appointed their delegates, framed their Constitution, and then went and asked to be admitted as a State into the Union; and if they had conformed essentially with the requisitions which had theretofore been observed, congress uniformly has admitted them into the family of States. That was the case with Michigan. My young friend paid a compliment to that sturdy old veteran and patriot, Gen. Jackson, and contrasted him with the accidental president, in the case of Rhode Island. He represented him as interfering and leading little Michigan, from her territorial condition, and placing her among the family of States. Sir, my young friend is a little mistaken about this matter. Gen. Jackson had nothing

more to do with admitting Michigan into the Union, or forming her Constitution, than Bolivar, in South America. I remember something about that, and how little Michigan came to congress with her representatives and senators——

Mr. HALLETT. I wish to correct one statement of fact, if the gentleman pleases, at this point. I understood the gentleman to say, that a majority of the people of Rhode Island, did not vote for forming a new Constitution.

Mr. BRIGGS. I stated that there was not a majority of the legal voters.

Mr. HALLETT. Yes, Sir; there was a majority of the legal voters, and of the male population. There was a majority of three thousand freeholders, and a majority of the population.

Mr. BRIGGS. Then I was mistaken on that point. I remember when little Michigan came and knocked for admission, and I remember when the door was slammed in her face for many long weeks, if not months. And, I can tell you why it was so. It was so, because the three great States that lay south of her, claimed a portion of her territory, and refused to vote for her admission, until that question was settled. And what was the result? With the same lawless thirst for territory, and disregard for rights and law, that those despots of the European continent manifested when they cut up and divided poor mangled Poland, they persisted in their rapacity until they accomplished their purpose. I remember on an occasion of a debate on that question, of hearing that "old man eloquent," that just and great man who now sleeps at Quincy, say upon this question: "How stands it, who are the parties? On the one side are twenty-seven representatives from three States, holding more than thirty electoral votes in their hands, and all the force of this great republic, demanding territory from Michigan. On the other hand, stands the little territory in point of numbers, with one delegate on this floor, with a voice, but without a vote, and the principles of eternal justice on his side. But, Sir, such are the indications here, that no one can doubt what will be the result." And what was the result? Michigan was shorn of a portion of her fairest territory; it was cut off and given to the spoilers, and then Michigan was permitted to come into the Union. That is not a case at all parallel in support of the case which my young friend so eloquently advocated on this floor.

Now, without going into the question as to the difficulty which will be encountered by the construction to be put upon the law which it is proposed to incorporate into the Constitution, let me ask you—for we all have one interest in this matter; few of us who act here will ever be concerned in another Convention such as this; the white and whitening heads around me admonish us that most of us, before that twenty years shall come, will have passed to our account—then let me ask each of my associates here, if he thinks he is authorized to impose conditions upon those who are to come after us, as to the mode and manner in which they may hold a Convention?

Sir, there is another difficulty. What do we propose to do? Sir, what are the provisions of the law which we intend to incorporate here? Who knows what they are? Who can rise up and tell us what he is voting upon when he votes to adopt this provision, which requires that when the people wish to call a Convention to alter their Constitution, they shall do it in conformity with a certain law, and of course, in conformity with all the laws which that refers to? Who is there who can rise up and tell us what the law proposes to do in its specific provisions? We know what the proposition of the gentleman is outside of that law. Suppose a gentleman should vote for this, and it should be adopted into the Constitution; when his constituents meet on the first of November and they call on him to know why he voted for this amendment, and ask him what he voted for, when he voted for the law of 1852, can he tell them? Then they may inquire, why did you vote for it? Suppose my constituents ask me, why did you vote against it? did you know what it is? I should say no. I voted against it because I held that we had no right to impose any such conditions, as binding upon succeeding generations in calling a Convention, and I did not care what its provisions were, whether wise or unwise. But my objection was, that we had no right to impose such conditions; that I preferred the course marked out by the Committee who reported the resolution before us, that we should put the question to the people whether they would have a Convention, and if they chose to have one, they could judge quite as well as we can, what sort of law they wanted to govern it, and much better; and, therefore, I voted against it. But those who vote for it, can give no such reason.

As I have said before, I should prefer the proposition of the Committee to the amendment. The amendment which I offer, only restores the amendment of the gentleman for Wilbraham, to the form of the original proposition of the Committee.

Mr. FRENCH, of New Bedford. I simply wish to say, that I am in favor of the proposition of the gentleman for Wilbraham. I desire that there should be incorporated into the Constitution an article that will enable the people to have

a Convention without the interference of a subsequent legislature.

Being reminded, yesterday, by the gentleman for Wilbraham, (Mr. Hallett,) that if another party were in power at Washington, that if General Scott had been elected, this Convention might not have had the opportunity of revising the Constitution, and, remembering the effort that was made by the late legislature to repeal the Act calling this Convention, and, remembering also, the opinions which have been expressed upon this floor, of a distinguished gentleman in this Convention from Cambridge, (Mr. Parker,) that the legislature, even after we had assembled, had a right to repeal that Act under which we were convened, and send us home, or turn us out of doors, I think it is worth while that we should incorporate something into the new Constitution, that will obviate that difficulty in future. We know the reverence that some very learned and distinguished gentlemen in this country have had, for law and power, when it was on their side of the question, and how they have expressed themselves with regard to it when it was opposed to them.

In the campaign of 1840, what did we witness? A large and powerful party coming into that contest with this motto upon their tongues and upon their BANNERS: "Peaceably if we can, forcibly if we must." They entered into that contest, and their organs and their speakers put forth these sentiments: we will appeal to the ballot-box once more, and if that is not successful, then blood will flow.

We will appeal to the ballot-box this time, and if we do not succeed, blood will flow. That was the language of speakers high in authority in the United States; that was the doctrine which they put forth. They went on to say that the administration had "ruined the country." I will quote their language, Sir. "We will make one more appeal at the ballot-box, and if that does not prove successful, we will march to Washington and drive out these marauders by force." Do gentlemen deny that? If they do, I will put in the proof. Now, Sir, when we are revising our Constitution, remembering these things, I ask you, Sir, if it does not become us to put the citizens of Massachusetts beyond the reach of such men and such a party. Therefore, Sir, let us incorporate into this Constitution a self-acting clause, as it is termed, not for the purpose of putting limits upon the people, as has been remarked by the gentleman who preceded me, but for the purpose of enabling the people to have a Convention to revise their Constitution if they wish, accidental legislatures or accidental governments which may be in power to the contrary notwithstanding.

Now, Mr. President, the simple proposition is this: shall we put into the Constitution an article that will enable the people, in a plain, legal, constitutional manner, to have a Convention to revise their Constitution, without reference to the party that may be in power at the time? That is the length and breadth of it; and I earnestly desire that every gentleman will weigh this matter—remembering the past, and casting his imagination forward to the future—and on this occasion do something; yes, Sir, do just that which shall retain—or rather leave where we find it—in the hands of the people, the power to call a Convention to revise, alter, or abolish the Constitution that we may form for them, should they accept it, without the interference of any subsequent legislature—any subsequent body of men, acting as a party, or as a State or General Government.

Mr. DAWES, of Adams. I think, Mr. President, that we are in danger of overdoing this matter. I, for one, am disposed to go for the largest liberty; but, Sir, I cannot go quite so far as the gentleman for Wilbraham is desirous of going. We are told by him, and the gentleman for Northborough, (Mr. Burlingame,) that there are two schools of politics in this matter; one is the school to which the gentleman says he belongs, of those who desire to give force to the will of the people, no matter how it is expressed; and the other is the school which would give the will of the people force when legally expressed. The one has charms about it which attracted my friend for Northborough and the gentleman for Wilbraham; but the other strikes them as horrid. I have nothing to say about those schools, but I think this discussion has developed the fact that there are two more schools; and, for my own part, I wish to have it put upon record to which of these schools I belong. One of these schools is of those who say that we must take care of posterity, and the other school believe in letting posterity take care of themselves. For one, I prefer to let posterity take care of themselves; I am desirous of letting them have the largest liberty, untrammelled by any restrictions of our day and generation; and when we shall have provided in the Constitution that we shall submit to the people, that the people may call a Convention just when they please, to alter their Constitution, I think that we shall have done all that can be expected of us by those who shall come after us. But, Sir, when we undertake to provide for them the form and the method of their proceeding, and say that all the wisdom that is to be hereafter in Massachusetts, is to be as nothing in comparison with the wisdom which existed in

1852 or 1853, I think we are going a little too far. We provide in one part of this resolution that the people shall vote on a call for a Convention just when they please; and then we also say that they shall vote on one once in twenty years, whether or no. This reminds me of the clergyman who made an appointment in this manner: "On the next Sabbath I shall preach in this place, Providence permitting; and I shall preach here two weeks from this time, whether or no!" [Laughter.] Let us content ourselves with providing in the Constitution that the people shall have the right to alter their Constitution by a Convention if they please, and just when they please; and having provided that, what in the name of reason is the use of saying that every twenty years they shall, whether they will or not, assemble and vote whether they will have a Convention according to a particular form? Do our friends distrust the people that are to come after us? It seems to me that this is all lip-service. Why, Sir, of all the gods men worship, no one is put off with so much pharisaical outside show and lip-service, as this god, the people. Men have been continually getting up—I do not mean here, particularly—and calling on the people, saying, "Lord, Lord, have we not prophesied in thy name; and in thy name cast out devils; and in thy name done many wonderful works?" Have we not done this and done that for the dear people? Sir, if we let the dear people alone, they will take care of themselves. Are gentlemen afraid that in twenty years from this time, the people will be so contrary that they will not do as they have a mind to? For my own part, I am willing to trust them. When we provide that they shall have a Convention, I am not afraid that any legislature that shall come after us will trouble them. This very cry of our friends the last winter, that the legislature had an idea in their minds that they would trouble the Convention, as my friend for Northborough will remember, raised "the rattling thunder of the people about their ears, and brought down an avalanche of indignation upon them." Why, Sir, it scared them almost out of house and home, when the people rose in their majesty. Now, are our friends afraid to trust the people or the legislature who shall come after us? If the people want a Convention to amend their Constitution, we can here provide for that in the Constitution which we submit to them. When that is done, I am willing to risk them, and rest there. I would like to see the legislature that would attempt to interfere with the voice of the people, thus expressed. That, Sir, is a phantom that cannot be raised. We know what awful consequences, a few months ago, within the recollection of all of us, visited those against whom the cry was raised, though false, that they intended in the legislature, to interfere with the will of the people in respect to this Convention. But, Sir, is it any worse—supposing they should attempt it—is it any worse for the legislature of 1873 to undertake to control this matter, than for us to control it by the Act of the legislature of 1852? Is the legislature of 1852 all that is left? Are they the only minds that can provide for arranging the necessary details of a Convention? But, to go back to what I said in the first place, what is the need of going farther than this, and saying that for all coming time the people of this Commonwealth, whenever they like it—on the first Monday in November, or the first Monday in June, if you please—when they shall have so voted, may have a Convention to alter their Constitution? If you are going to direct that they shall do it so and so, you might as well undertake to provide that the gentleman who now presides over this body, shall be the president of the next Convention, or that my honorable friend for Wilbraham shall represent Wilbraham then! There is a great variety of details into which there is just as much propriety and necessity for entering, as there is that we should enter into the details that we are providing for in this resolution. Take the four first sections of that Act; and what do they provide for? Why, Sir, they branch out into details and ramifications of every kind.

I want to know by what sort of patent right this legislature of 1852 had the exclusive monopoly of deciding the method in which the Constitution shall be amended. And this is declared by those who say that they want to set the example here. They say that this is the first time and the only time that they shall have; if they omit to do it then, they omit it forever to say that the people shall alter their Constitution as they please. Now, Sir, the only way to provide that the people shall alter their Constitution as they please, is to say so. The only way to make it secure and certain that the people may alter it by a Convention, untrammelled by legislative action, is to say so; but do not, in the very voice in which you say so, require them to do it in a particular form, for fear that the legislature chosen by the same votes that shall call the Convention, may do what it was so falsely said that the legislature of the past winter entertained a serious idea of doing, but were frightened out of by the voice of the people. Sir, I belong to that school—if my friend from Lowell will permit me to say so—that school of "live young men" who are willing to let posterity take care of themselves when they want a Convention, and are not troubled about

the way they will do it. My impression is, Sir, that we are not the wisest body that ever assembled, or that ever will assemble. I apprehend, Sir, that there may be such a thing as a legislature in 1873, as wise as the legislature of last year, and that it is among the possibilities that there may be a Convention in that year, as wise as this Convention. When we shall have prepared and submitted to the people a Constitution that shall answer the exigencies of 1853, and meet the present wants of the people of this State, we shall, it appears to me, have accomplished all for which we have been sent here. We shall have done our duty and may be permitted to lay off the robes of office and meet the welcome, "Well done! good and faithful servants." But, Sir, if we undertake to make a Constitution, not only for to-day, but for all coming time, and to put into our Constitution of to-day that whoever undertakes hereafter to improve upon it, shall do it in a particular form, it seems to me that we are departing from the programme which has been alluded to so often here. We do not find any such authority as this laid down there; and we shall have gone beyond our commissions if we trouble ourselves about those who are abundantly able to take care of themselves. I think we have provided already the method of revising the Constitution hereafter. We simply say that the people of this Commonwealth shall have power, at all times, when they shall so choose, to amend their Constitution by a Convention or otherwise, as shall be legally provided. If anybody desires to have the Constitution amended illegally, he might wish a farther provision. I think it is just as much as we can do to meet the exigencies of the present time, without troubling ourselves at all about what those who shall live twenty years from this time shall think ought to be done, or the best method of doing it.

Mr. SIMMONS, of Hanover, obtained the floor, but gave way to

Mr. GRISWOLD, for Erving. I understand, Mr. President, that gentlemen who have charge of this subject, are preparing and intending to submit some modification of the substitute upon which we are now acting; and if this proposition is to be modified hereafter before it shall finally be adopted, it seems to me that we are merely discussing an irrelevant issue, and the time which we spend in discussing the subject now may therefore be lost. I rise, not for the purpose of entering into debate, but for the purpose of moving that the farther consideration of this subject be postponed until Monday next, at ten o'clock, in order to give the friends of this measure time to put their views into such shape as may be acceptable to the Convention.

Mr. NAYSON. I desire to say a single word, Mr. President, in reference to the motion just made by the gentleman representing Erving. I understood the gentleman to suggest as a reason why this subject should be postponed, the fact that gentlemen who were supposed to have this matter in charge, had agreed to a modification of the proposition now under discussion, and that sufficient time had not elapsed to allow that modification to assume a definite shape to be presented to the Convention. I wish merely to say, that if the remark of the gentleman for Erving was understood to apply to the chairman of the Committee to whom that matter was referred, or to any members of that Committee, the gentleman is mistaken in his supposition. I wish to say in justice to my colleagues upon that Committee, that so far as I have been able to ascertain, the views which that Committee have presented, and which are contained in document No. 75, are still entertained without any change by that Committee. Although the Committee of the Whole has seen fit to substitute for that Report the proposition submitted by the gentleman for Wilbraham, the members of the Committee have not changed their views, nor is there any probability that any such change will take place in the future discussion of this subject. I do not mention this as a circumstance of any importance, but merely in order to prevent a false impression being derived from the remarks of the gentleman for Erving. So far as I have been able to observe, the Committee concurred entirely in the Report, and whatever may be the ultimate action of the Convention in regard to it, no change has taken place in the mind of any single member of that Committee.

Mr. GRISWOLD. I wish simply to state that I did not allude to the chairman of the Committee, nor to any members of that Committee. I believe the proposition now under discussion is the substitute proposed by the gentleman for Wilbraham. I referred more particularly to him and to those who were in favor of his proposition.

Mr. HALLETT. I understand the suggestion of the gentleman for Erving to be, to postpone the consideration of this question until ten o'clock, on Monday. If there is any difficulty in the minds of gentlemen as to the people having a right to change the Constitution, without reference to the legislature, so that they suppose that anything else can be presented, so as to give them that power, I have no objection to this postponement. I have no doubt, however, that the resolves, as they stand now, are perfectly

practicable, and involve a principle, which I believe the Convention is disposed to adopt. But, if gentlemen are alarmed at the provisions of these resolutions, I have no objection to their postponement until Monday next, when we may, probably, have a fuller house. If, on the other hand, a majority of the Convention present think that the Convention is ready for the question, I should like to have it taken now, so that the matter may be finally disposed of. I think, upon full examination, the resolves will be found to be perfectly satisfactory.

The motion to postpone the farther consideration of the resolutions, until Monday next, was agreed to.

*Quorum of the House of Representatives.*

The Convention next proceeded to the consideration of the resolve on the subject of a Quorum of the House of Representatives; the question being on the final passage of the resolution,

Mr. DUNCAN, of Williamstown, moved to lay the Orders of the Day upon the table.

The motion was rejected.

Mr. SCHOULER, of Boston, moved to amend the resolution, by striking out the words "one hundred," and inserting the word "sixty," so that sixty members should constitute a quorum.

The amendment was not agreed to.

The resolution was then finally passed.

*Counting and Recording of Votes.*

Mr. DUNCAN, of Williamstown, submitted the following resolution:—

*Resolved*, That the Constitution ought to be so amended as to make provision for securing, assorting, counting, and recording of votes, uniformly, in the elections of all officers throughout the State.

The resolution was referred to the Committee of the Whole.

*Motion to Reconsider.*

Mr. HALLETT, for Wilbraham, moved to reconsider the vote of yesterday, by which the Convention passed the resolutions in relation to the Council.

The motion was placed among the Orders of the Day.

*Committee on the Preservation of the Records.*

Mr. DANA, for Manchester, asked to be excused from serving on the Committee on the Preservation of Records, being upon two other Committees.

The request was granted, and Mr. Hazewell, of Concord, was appointed, by the Chair, to supply the vacancy thus created in that Committee.

*Banking.*

Mr. GRISWOLD, for Erving. I move that the Convention resolve itself into Committee of the Whole, on the resolves on the subject of Banking.

The motion was agreed to, and the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Butler, of Lowell, in the chair.

The resolutions were read by the Secretary, as follows:—

*Resolved*, That it is expedient to insert into the Constitution articles providing

1. That the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws.

2. That the legislature shall provide by law for the registry of all notes or bills, authorized by general laws to be issued, or put in circulation as money; and shall require ample security for the redemption of such notes, in specie.

Mr. FROTHINGHAM, of Charlestown. Mr. Chairman: I will not waste words in urging before this Committee that the subject of the currency is one of great magnitude. It is sufficient to say that it is a question of so large a character, that I willingly would have avoided the duty of meeting it, and have seen it in the hands of others. But gentlemen whose good opinion I value, did me the honor to request me to bring this matter to the notice of the Convention; and as, in view of the action that was thought to be necessary, only a portion of the great question would have to be reviewed, and as the principles of this portion were simple in their character, and, as I apprehend, as to the action contemplated, could be easily and successfully defended, I agreed to comply with the request. Hence resolves on this subject were introduced. These were referred to a Special Committee. This Committee has on it gentlemen of much experience in banking, who take one side or the other of this question. After much deliberation, they, with great unanimity—I may say that only three voted against its adoption—agreed to the Report that is now under consideration.

And, in the first place, the action recommended by the Committee does not propose to interfere with existing banks, only so far as to prevent, by special acts, an increase of their capital stock, but

it leaves them to be dealt with by the legislature. In the next place, in relation to an opinion prevalent among the members, allow me to say, that the prior action of the Convention, in the matter of the formation of corporations, does not, I apprehend, so much as touch the main and vital point of this Report.

The Report of the Committee proposes to prohibit the legislature from granting special charters for banking purposes, and to prohibit the increase of the capital stock of any chartered bank by any special act; but to allow banks to form, or the capital stock of banks to be increased, under general laws. It proposes, also, to make it obligatory on the legislature, in any general laws they pass in reference to the issue of circulating notes, to require ample security that such notes shall be redeemed in specie. These are the propositions; and the question is, shall they be incorporated into the organic law of the Commonwealth?

The consideration of these propositions opens up the whole question of the currency. To treat this elaborately, it might, perhaps, be considered not only not irrelevant, but proper and even necessary, to go somewhat over the history of banking in the old world, and show how it has been in times past, and how it exists there to-day. But this is not essential to the purpose of explaining the views of the Report, and will be passed over. And it might not be deemed out of place, to trace somewhat at length the footsteps of banking in our own country, and view it as it has been in the different States from the adoption of the Constitution down to the present time. It would be no hard task to go over the many speeches and statistical tables, on this topic, and present pregnant facts to show our large experience in banking. But this, too, is not necessarily connected with the question immediately before the Committee. But the same remark will hardly apply to the history of paper issues in our own Commonwealth. It may be deemed almost a dereliction of duty not to go minutely over this history. But a brief glance at this past, and a remark upon it, are all, however, considering the time allotted, that I shall venture to attempt.

Review the currency question here, on this soil, from the commencement of colonization down to the adoption of the present Constitution, and it will be found that there has been every variety of experience, in the use and the abuse of a paper circulation. For a generation our fathers got along with a variety of articles for money, among which figured the simple wampumpeage of the Indians. Then came the attempt, in 1652, to supply coin from their own mint. A private bank was proposed in 1685. In 1690 the colonists first set the example, in their province bills, of a paper issue, which they kept up for sixty years. To this succeeded the famous silver scheme of the merchants, and the no less celebrated land bank scheme of speculators. And this colonial experience was ended, in the paper issue during the Revolution. Surely here is material for a history of no small interest, and one that might be scanned with no little profit. Here are, indeed, most useful lessons. But I shall not go over this detail.

Take next what immediately concerns the action of to-day—the origin and progress of our present system of banking—or the history of paper issues from 1780 to our own time. A brief sketch is all that time will allow me to make. It was amidst the suffering and ruin occasioned by the existing paper money that the present system of banking commenced. Let those who think that this suffering was light, go into an investigation of the matter. Look at the record; look at the facts that are there to be found, and say whether the suffering was light or not. The State commenced chartering bank capital here in 1784, first with the old Massachusetts Bank, and then with the Union Bank in 1792. In 1802, the banking capital was $2,225,000. In 1816 it was $11,475,000. In 1829, it was $20,420,000. In 1837, it was $38,250,000. In 1852, it was $43,270,000; and in 1853, it is $53,830,000, with a power of issue equal to $67,000,000. Such is a glance at the progress of banking, and the existing capital in banking in this Commonwealth.

And in reference to the whole of it, commencing with the commencement of Massachusetts history and coming down to our own times, it may be remarked, that whatever may be the benefits that accrue to commerce and to the community from paper money in all its various kinds, Massachusetts has experienced those benefits. And whatever evils there have been in the world, whatever robbery of labor, whatever the mercantile community have experienced in the matter of fluctuations—all the evils have been experienced here on the soil of Massachusetts. Take, for instance, the period before the adoption of the Constitution. We had our continual and periodical reversions in trade; and they were almost invariably traced, directly or indirectly, to the emission of paper. Take the experience we have had since the adoption of the Constitution, and who is there who will not admit that our commercial interests have been put in jeopardy by the enormous inflations, and, at times, by the alarming insecurity of our paper issues? Need I quote the melancholy statistics of 1837? Need I quote

later or earlier similar statistics? Is not this fact admitted by one and all? In reference to this experience of Massachusetts alone, allow me to quote the words of one whose words are apt to be regarded, even by those who may not take the same view of this matter that the Committee take, and apply them to it. It was in 1844 that Daniel Webster said, in one of his remarkable speeches:—

"We are well instructed by experience—let us not be lost to experience. Let not all the good, all the comforts, all the blessings, which now seem in prospect for all classes, be blighted, ruined, and destroyed, by running into danger which we may avoid. The rocks before us are all visible—all high out of water. They lift themselves up, covered with the fragments of the awful wrecks and ruin of other times. Let us avoid them. Let the master, and the pilot, and the helmsman, and all the crew be wide awake, and give the breakers a wide berth."

This is an injunction which this Convention may deign to respect.

In reference to the whole of this experience, too, permit me to make another brief remark. I am sure it would surprise even the intelligent members of this Convention, if they would go back and read the communications which have been made, both to our ancient, great and general court, and to our modern legislature, by patriotic men who have been placed at the head of affairs. They have often, from their high and independent and impartial seat of power, discharged their duty to the people of this Commonwealth, in this matter of banking. They have called their attention repeatedly, to the exorbitant paper issues, and recommended the duty of imposing severer restrictions upon them. But I have not time to quote even these to any extent.

Let me refer but to one. Governor Davis, in 1834, only three years before the great bank explosion, gave advice as sound as could be given on the subject of banking, to the legislature. He dwelt on the inadequacy of the specie basis, predicted loss to bill-holders, and recommended "some way of giving greater stability to the local currency." And what was the effect of that warning? How was it heeded? Let the batch of banks that immediately followed, attest. It fell, like a thrice-told tale upon drowsy ears. It was not heeded by the representatives of the people, when they should have looked to the interests of the people. There is one extract from these gubernatorial messages, that will be quoted, because it seems to meet the present state of things precisely, both as to the danger there was and is, and as to the plain duty there is now before us. I allude to another gentleman whose name will be received by this Convention, with respect—Hon. Edward Everett; and I refer to what he said to the legislature, in his message of 1838. I ask the attention of the Convention to his few, concise, and true words. It was after the crash of 1837, when millions of bank capital were sunk, and hundreds and thousands of laboring men, and of others, suffered in consequence of enormous defalcations. He says, in his message of 1838:—

"In the system on which our banks are conducted, the general soundness of a great majority of them is not inconsistent with the impending insolvency of individual banks, kept up to the last moment by possessing a credit with their associates, and then sinking at once, to the heavy loss of the unwary, and of those least able to bear it. The possibility of occurrences like these ought to be prevented."

Here is a precise statement of the working of the system, and its dangers; and here, too, is a true statement of the duty of the people. The possibility—mind the word—the possibility of occurrences like what then had just been witnessed, ought to be prevented.

Now, let me ask legal gentlemen upon this floor, let me ask bank directors upon this floor, let me ask one and all, to point to a clause upon the statute book that will be efficient to prevent the possibility of future occurrences just like those which we have had in the past of Massachusetts? Are we not just as likely to have them in the future of Massachusetts? There are no such provisions of law. There is no adequate preventive security. There is the same system and the same danger.

Now, assuming that it has been proved, or that it is a fact that cannot be denied, that there has been a great evil in the Commonwealth, I take it there may be a reform work here at least in reference to the future.

If reformers desire to do something, here is an opportunity. They will endeavor to do what can be done to prevent the future occurrence of such evils. And, perhaps, no Convention called to revise the Constitution of Massachusetts, could have been called between the year 1837, and any future time, when this question of the duty of the people, acting in their sovereign capacity, in reference to banks and banking, would not have come up, and would not have been obliged to have been met. How shall this Convention meet this duty? Will they meet it boldly, like men who feel that something should be done to benefit the people, and protect them? Will they meet it like men

ready and willing to stand on sound principle, and let consequences take care of themselves? Or will they meet it timidly, and as though they were afraid to trust the people, as though they were not ready for a sound principle and safe practice? That is the question.

And the next thing is, what ought the government to do in its capacity of agent of the people; and what ought the people, acting as sovereigns, to put into their organic law, as guide and direction to their agents, in relation to banks and banking? How shall the Convention meet this duty?

To answer this question properly, it may be well to keep in view two things; one is the trade in money, and the other is the making of money. One is the use of an article as it is, and the other is the production of an article. In other words, it may be well to keep in view, clearly and distinctly, the difference between these two functions of banking, to wit: one that of deposit and loans, and the other that of the issue of bills. Now there may be banks of deposit and loan, of heavy capital, without their having a dollar of issue, and therefore, without the danger of their doing any injury to commerce or to the people. There are banks out of the Commonwealth, for instance, which have a large deposit and exchange business, and which do not issue a dollar of paper money. It is apprehended that the duty of the government in relation to these two species of banks, is widely different.

Take the banks of deposit and loan. Our merchants desire to use a bank for the purpose of placing their money in it for safe keeping. They look around and find an institution which suits them, as to character, locality, integrity of the board of directors, as to prospects of getting facilities for business, and they choose this bank for their accommodation and become depositors in it. The bank acts on this principle, that though the deposits are liable to be drawn out at any time by the individuals who deposited them, yet that they will not be all drawn out on one day, but that a certain average amount will always be left in the bank. On this average amount they safely make loans, and derive their profits from them. This custom of deposit and loan is carried out by almost all in transactions between man and man. Let the large brokers in State Street, who do a business larger than some of the banks, testify to the extent to which this business of deposit and loans is carried on. Now, is it the duty of the government to come in and guarantee to the individual who lends money in this way to another individual, that it shall be repaid? I think not.

Nor has there been any difficulty in relation to that species of banks. They do not add at all to paper expansion and its varied evils. Take, for an illustration, the Scotch banks, though I am aware that these banks have the power of issue. There has been a system of banking in Scotland for one hundred and fifty years. And it is an established fact, that it has stood through rebellions, through the suspension of specie payment by the bank of England, through all commercial fluctuations; and during all that period the people of Scotland have not lost so much by the failure of banks, as Massachusetts has in one year; to say nothing of other States. And what is a distinguishing feature of the Scotch system of banking? It is the practice of receiving deposits, which has contributed much to make them so safe. They bank, to a very great extent, on existing capital. Now banks of that sort—banks purely of deposit and loan—perform a great and beneficial part in the great business of society. Sound policy requires that they should be interfered with as little as possible. Let this business regulate itself. Therefore, the resolve on your table proposes to leave that deposit and loan business entirely alone. It does not touch it. It proposes no restrictions on it, but leaves it to the legislature; and those who go into it will have all the security which is afforded by the existing laws.

The function of banks on which I next propose to remark, is that of making issues or of supplying a paper circulation, in relation to which there has been and is such endless speculation. It is the peculiar character of this species of credit—the character that law has given to it, that makes the interference of government necessary.

Here it is well to look at things, not theoretically, but practically, and to consider certain questions as settled. It is no longer an open question, whether the State has the constitutional power to authorize a paper currency, for the power is in full exercise. It is no longer an open question, whether there shall be a mixed circulation, composed of paper and coin, for this now mingles in all the daily round of business. Nor is it a question, whether individual credit shall be allowed its natural advantages; that is, whether individuals of established character for personal integrity and pecuniary responsibility, shall be allowed the full benefit of such reputation, to put out their notes to go as money. Existing penalties have long existed that cut off this natural right, and create a different credit, that goes as money. In a word, a system has had full play for eighty years, and every measure tending to reform, should have reference to it.

Here, then, exists, in Massachusetts, as in other States, a species of credit that is made by law different from individual credit. It is a paper

currency, authorized by the State, and which the State considers it to be its duty to watch over and protect. And what is this currency? It consists of notes or bills, payable in specie, at the place of issue, by the power that issues them, without interest, at the will of the holders of them. It is vital that these bills possess this convertible power, and that there should be confidence that this power is a real power. Now, this element of convertibility is acknowledged to be a vital element throughout the world, or wherever sound banking principles are recognized and acted on. And the public good requires that this confidence should be based on substantial foundations; and hence every proper method should be taken to secure an ability to exercise this power. For the people have no choice as to the use of what exists as currency. Every one who does business—and who here does not do business—is obliged to make use of the existing circulating medium, or his business can hardly go on. Thus paper money has become interwoven into the daily transactions of life. With the coin it makes the currency. And this is the life-blood of commerce. If it circulates through the body politic, sound and healthy, it will exercise a sound and healthy influence; if it is corrupt and becomes stagnant, it vitiates the commercial world, and indeed affects the interests of the whole public. This cannot be denied. Hence consists the magnitude of this question. Indeed, the regulation of the currency, or fixing the value of coin, is universally regarded as an attribute of sovereignty; and the emission of paper issues has much to do with this value. Again, I remark, that as to the use of a currency, the people have no choice. They are obliged, of necessity, to make use of the existing supply.

Now, the State has assumed the duty of supplying this currency; but instead of supplying it by itself directly, it delegates this attribute of sovereignty, this power to make money, to private corporations; and it is the connection of these institutions with this delegated power, that furnishes a justification for the whole entangling code of laws, in relation to banks, with which the statute books are filled. There is nothing else that would justify such a code. And the whole purpose of these laws is, to secure the convertibility, at the will of the holder, of a piece of bank paper, at all times, into cash. That is the end and aim of the whole.

Now, need facts be adduced to prove that while, under the present safeguards, this convertibility is obtained in times of prosperity, yet that it has not been secured in periods of commercial revulsion? Need time be spent to prove how much the people have suffered from depreciated paper? Need it be shown, that in other times than those of commercial revulsion, that in individual cases, this object has not been reached? Indeed, who will contend that this vital point has been guarded as it ought to have been? Who cannot recall, without the aid of statistics, the losses, the enormous evils, that have flowed from a neglect of this point—losses and demoralization experienced in this State alone, to say nothing of what has been seen in other States? It is a lamentable fact, that evidences of the want of proper care on this point are continually multiplying. Within a short time, close by us, in the State of Connecticut, several banks have exploded, and what security have the bill-holders that the bills will not depreciate, or even that ultimately they could be converted into cash?

Now, on what principle has the State acted in reference to a proper and efficient security for the convertibility of paper into specie? It has passed certain laws, such as they are,—it would be easy to enumerate them,—but it has left the execution of these laws in the hands of the banks. They determine whether they shall be observed or not. Take, for illustration, one which is considered to be the best of all the laws in reference to banking—that vital law, which requires that there shall be a deposit of fifty per cent. of the capital stock in specie, before a bank can go into operation and issue bills. Is it not well known that it has been, and is, systematically violated?

But, in the next place, if these laws were observed, they would not afford efficient protection, because they do not meet the precise point of security. Besides, they are based upon a wrong principle. The principle ought to be, that when such a high power as that of sovereignty is delegated to individuals or corporations, the State should take into its own hands security that that power will not be abused. It should require a bond for good behavior. This it has failed to do. It leaves the fulfilment in the hands of the banks, and hence it is that there has been so much of insecurity and loss in connection with these institutions.

Now, this second provision in the resolve under consideration, is designed to make it obligatory on the legislature to require security. It proposes to the people to say to the legislature: "If you charter any banks, if you allow any paper money to be issued by the banks, it shall be your duty to require that a register of all such money shall be kept, and that ample security shall be furnished that all such money shall be convertible into specie whenever it may be required." That is in the nature of a simple rule. It leaves all matters of detail entirely in

the hands of the legislature. This power is left to devise ways and means relative to what that security shall be.

But, the question may be asked, what does the phrase "ample security" mean? Does it mean that there shall be a deposit of stocks, of real estate, of bonds and mortgages, or of specie in the hands of the authorities of the Commonwealth? The answer is, that it leaves the whole matter to the legislature. We merely say that if they authorize banks to issue bills, they must see to it that they take ample security that the public do not suffer, and are not even liable to suffer, by their issue. I ask if that is not right in principle? Is it asking more than a reasonable and just requirement from those to whom is delegated such a splendid privilege? Is it too much to ask, from currency makers, a bond of indemnity? Such a bond, the honest will not object to giving, while in case of fraud, it ought by all means to be held by the public.

In the second place, this security principle is in accordance with sound commercial principles. It will make the notes issued by banks resemble bills of exchange, by means of which such an immense business is done. Now, what is it that makes bills of exchange, in general, so convenient and safe? Why is it that, comparatively speaking, they perform their office so regularly, without interference by government, and subject only to the laws that govern trade? It is this: because behind each bill of exchange there is property against which the bill is drawn, and which accompanies it to the place of destination, and the sale of which satisfies the face of the bill. That is the whole of it. It is upon this principle that the whole export and import trade of the country is carried on. It is upon this principle that the immense inland trade along the great lakes, and up and down the Mississippi, and to and from the ports of the Atlantic and Pacific, is carried on. When the total of all this is added up, the amount will be found to be enormous. It cannot be less than ten or twelve hundred millions annually. And all this immense transfer goes on regularly, safely, each bill of exchange continuing to be good as long as the property behind it is good. In this way the bill quietly performs the function of money.

Now, the benefits of bills of exchange, no one will deny. Nor are these benefits counterbalanced by enormous evils, as in the case of bank issues. But why is it that the ruinous fluctuations in trade, and commercial revulsions are never ascribed to the operation of these bills? Whoever hears such mischief laid to their door? Why is it that this cannot justly be done? Here in this country alone, is paper of this sort to an annual sum of a thousand millions of dollars, and yet no one talks of its being an inflated paper. It is because such bills are not all credit. It is because have behind them a basis of value. As long as the property behind bills continues its value, the bills will be good. Hence it is that they cannot be the cause of the fluctuations of trade. Now, compared with the amount of bills of exchange, the paper circulation is small; and yet it is to the working of this, to this paper issue, that these fluctuations and revulsions are almost exclusively and justly charged. This is because these bank issues are based on credit, and not on property. They are based on mercantile paper. Now in this, one piece of property, in its various exchanges as it passes from hand to hand, often becomes the basis of several pieces of discounted paper, each of the same value as the first; or worse still, they are based on accommodation notes, made without the transfer of a dollar of property. Now, can there be any other difference between the two, bank notes and bills of exchange? Bills of exchange have behind them property upon which they are based, while paper money is based upon credit, and often credit extended to its utmost bounds. That is the difference, and that is the only difference between them. Therefore, to make paper circulation as safe as bills of exchange, it is necessary to have it based upon the same principle. If it be required that property, that value, to the amount of the paper circulation issued, shall be deposited, as a collateral bond of security, there will be no more trouble in relation to it. That is the principle upon which the paper circulation of Massachusetts ought to rest. It is a sound principle. It is an impregnable one. Let it be proposed to the people. When they have adopted it and when it comes to be acted on by their agents, they will be secured against the immense losses by this paper circulation such as they have suffered in the past; and if they will look into it and understand it, they will sanction the principle.

And such is the growing demand for bank capital, that the adoption of it, or of some restraint, has got to be a matter of absolute necessity. There is a strong tendency to the creation of bank capital in times of inflation. Such times now exist. In this State, the increase has been very great. In 1851, there were seven millions authorized; in 1853, ten millions. Is it necessary to go into details as to the manner in which this increase is commonly obtained? At the last session, such was the predicted effect of previous grants of capital, eighteen millions of capital were applied for, and ten of it were granted. But who

justifies the legislature in granting such an increase? Did the public good demand it? Is this the opinion of our soundest commercial men? Is it the general opinion that this was a wise policy? Is this the language heard on every side, in the streets, in the press of all parties? Then why was the grant made? Because the power of interest was too strong for the resistance of principle. The advocates for a sound policy were powerless before the fearful combination arrayed against them. And so it will be sure to be in the future. The great boon is to obtain the power of issues, and this, too, in such a way that individual credit may be turned into the article called a currency. This paper money is the insane root that takes the reason prisoner. It is this that utters the horseleech cry. The more bank capital of this sort there is created, the more paper issue there is authorized, the greater will be the demand for more. This is the natural law of credit. It is imperious in its demand. Its condition must be complied with. Nothing is more certain than this: that the more paper issue there is authorized, the more there will be called for, and, in fact, obliged to be authorized. That is the developed law elsewhere. That has been the developed law here, on this soil, and from the beginning of the paper career in Massachusetts, down to this hour. Will any say that it will be safe to go on? But how can it be checked? If any mode can be devised to do it, will it not be wise for the people, in their sovereignty, to adopt it?

The only practicable thing that promises to check it, is for the people to make a rule that, in future, their agents, the legislature, when they delegate this attribute of their sovereignty of making money, shall require a bond of indemnity for a faithful execution of the trust. It is to require them to take ample security that what they authorize, and assume to protect, as money, shall, under no circumstances, become depreciated and valueless. Unless the people say to their agents "you shall not allow any more paper money to be issued, unless you take from those you allow to issue it, ample security," you will have this creation of more and more paper money going on, from year to year, until there is another revulsion, another scattering of wreck and ruin, another general burst of indignation, throughout the Commonwealth, against those who have falsified their pledges, and who have proved recreant to the trusts committed to them of protecting the rights of the people.

Mr. Chairman: The advantages of the adoption of the security principle as against the credit principle would be numerous. It would tend to secure for paper issues a foundation of solid capital; it would constitute a salutary restraint against extravagant expansion; it would secure, in its mode of registry, a more careful way of making issues; it would be more safe for the stockholders; it would be more secure to the depositors; it would be more beneficial to the public; it would maintain confidence in the banks in times of peril; it would give to each bank an individual character, and a basis of independence; it would tend to impel an increase of specie; and in its general feature of caution and safety, promote honesty, and thus guard against that demoralization that has so marked the history of banking; while, under general laws, it would deprive banking of its monopoly feature, and would here, as it does wherever the security principle has been tried, allow capital to go into bank business, and out of it, as the wants of trade dictate.

This policy would guarantee the public that paper issues were on solid capital, upon actual value, that could not be disputed. Supposing that the ample security which the legislature would require would be a deposit of value, as a condition for the emission of paper, as it is wherever this principle has been applied, then this would be a requirement which those that issue paper could not evade. They must provide fixed capital before bills can be obtained, and no subsequent mismanagement will be able to scatter this capital, because it will be out of the power of the banks. Nor can the same deposit answer for half a dozen institutions. Now take the law as to specie, and who does not know that this is systematically violated? But those who started such banks, in too many instances, have not been capitalists, but money borrowers. They borrow the very capital on which their banks are established. There is reason to believe that no small portion of late applicants for banks, have been of this class. Take the last application for eighteen millions of bank capital. Who supposes that there was this amount of funds unemployed, and ready to be invested in banks? No one. A portion of it may have been ready for such investment. I do not deny this. It is difficult to determine, however, how great a portion. But few will deny that the balance would have been borrowed capital. Now if the applicants for new banks were required to deposit actual value before they made issues, it would do away with this evil of credit banking.

This policy will be a restraint on bank expansion. That such restraint would be salutary, few will deny; that it would prove a perfect check on expansions, is not pretended. Such an issue has been a great and overpowering evil

throughout the whole of our banking experience. It has been this that has fostered speculation, laid the foundation of sudden changes, raising prices one day and lowering them the next day, and thus creating those fluctuations that are the bane of trade. It is this that has created that feeling of insecurity which has existed in relation to banks. Now, upon what calculation is it that banks, with so small an amount of specie, issue such floods of paper? Why, upon the calculation, the hope, the belief, that they will never be called on to redeem this paper in specie—that they never will be required to redeem their obligations. How many banks expect to be called on to redeem its issues, in specie? Is this the principle on which those who are to supply so important an article as currency should act? The calculation ought to be a widely different one. If this Report be accepted, and the people put it in the Constitution, they will lay down a rule that will require a different policy. They will require the banks to make their issues on the principle that they will, at every hazard, be required to redeem their issues, in specie, and they must make their calculations accordingly. This will make the banks more cautious, and better prepared to meet their issues, when they return upon them. Instead of taking every means to push out their circulation, they will await a legitimate demand for it. Such a restraint could not fail to be a salutary one.

This policy would be more safe to stockholders. The lessons they have received have been severe ones. Let me refer to the millions of bank capital that have been sunk, either by weak or by fraudulent management. Take the immense losses suffered by the badness of mercantile paper in 1837. Would not such a principle as this now advocated, have been a salutary check on the whole of this business? In the first place, the securities could not have been wasted. So much as was represented in bills would, at least, have been secure. Then, in the next place, the means could not have been had to carry on such immense defalcations. In every way in which this can be viewed, this would have proved safer to stockholders. Now who are the stockholders of the Massachusetts banks? The stock gradually passes from first hands into those of actual investors. But these, to a great extent, are not heavy capitalists, the millionaires. I now read from a late report of the bank commissioners of 1851: The total number of shares then, was 411,700; and of shareholders, 25,781. Of these, 6,648 were women, who had 58,548 shares; 2,623 were trustees, who had 46,035 shares; and 333 were guardians, and savings institutions, holding 27,837 shares. The commissioners, on this, remark: "The stock is widely scattered into almost every village in the State; and but a small comparative amount is held by capitalists, or by persons engaged in heavy mercantile operations, in the large towns and cities." But take the case of an individual bank. The directors of the State Bank, in a memorial, in 1836, state that of 30,000 shares, 13,139 were owned in Boston, and 16,861 in the country. The Savings Bank was the largest stockholder. Out of 808 small shareholders, 354 were females. There were holden by various societies, colleges, schools, executors, children, and trustees, 8,229 shares, amounting to $493,540.

These are the persons who are largely stockholders in the banks. These are the persons who pay the bank tax—a tax founded, in my judgment, upon a wrong principle, by which the capitalists get clear of their just amount of taxation, while those who have less means, are made to pay the greater proportion—in a word, a tax upon the industry, the commerce, the best interests of the Commonwealth. These may not be palatable truths, but they are nevertheless truths; and when the community come to understand them, it is hoped there will be a sounder system of taxation adopted.

But to return: Now I ask what system will be, I do not say, be immediately the most profitable, but the soundest, the healthiest, and will furnish to the stockholders of the banks the greatest security; and in the long run, after all, be the most profitable to them and the public. Is it that system which places in the hands of "Richard Roe and John Doe," without security, the privilege to furnish the currency for the people of the Commonwealth, which to-day may be good and to-morrow may be worthless? Or is it that system which requires a pledge of fixed value to be placed in the hands of the authorities of the State for the redemption of every dollar of paper money issued?

The adoption of this security principle as to paper issues, would produce a great reform with regard to the mode of issue of a currency. Take the existing mode of these issues, independent of security. The State have delegated to the banks the power of supplying the currency of the Commonwealth, and the banks exercise that power at discretion. Now take the revelations of 1836, in relation to this one point of making paper issues, and if anything in the mercantile history of Massachusetts can be found more disreputable than the practices in relation to it, I should like to see it. The facts are of record. Why, there were instances where the president of a bank

issued paper without keeping a record of the amount he issued, and at the same time when the cashier issued paper without keeping any record of the amount he issued; so that neither the president knew how much the cashier issued, nor the cashier how much the president issued. Other instances might be adduced where issues were shamefully made. And yet, that paper circulated among the people, and was supposed by them to be issued under the protection of efficient law, and that the State watched it and guarded it! That was the credit which was constituted money by penal laws! Now this was one of the very first evils which the bank commissioners endeavored to remedy. Look through their reports and see if what has been stated is not true to the letter.

This looseness of paper issue was one of the first things they commented upon. What do they say in 1840? These commissioners, by the way, have been independent and honest-minded men, looking out for the benefit and protection of the Commonwealth. These are their words:—

"Two things ought, at least, to be considered indispensable. The evidence of the amount of issues and destructions should never rest upon records made and signed by the cashier alone; and the president of the bank should always have in his own possession, the means of knowing the exact amount of bills of the bank in existence. These precautions are equally important to the bank and the cashier."

Did the legislature then make any law, or have they made any to this day, in relation to the mere form of issue? No. It is a fact that able and competent men have been made bank commissioners; they have been paid thousands of dollars to go into the banks and reveal all the violations of law which occur, and they have made their reports. And committees of the legislature, acting upon the information furnished in this way, have brought in salutary bills, but those bills have been driven out by bankdom enthroned in the halls of legislation. I see before me the chairman of one of the banking committees who introduced an act, considered by an able committee to be necessary to protect the public in relation to banks, and based on a commissioners' report, and I saw that bill, so assailed by the plausible sophistry of bankdom that it was voted down. Now in reference to this very point of loose issue, what do the banking commissioners in 1851 say? These are their words:—

"In many banks, no record is kept by any officer except the cashier, of the bills issued, so that if any fraudulent entries are made in the books of the bank in relation to such issues, there is no effectual check to prevent the most injurious consequences, which might be avoided, if the president had, under his personal control, a register of bills signed and delivered by him, and of the balance outstanding."

So the same evil existed in 1851 that existed in 1836! But not a motion has been made, not a step has been taken, to remedy the evil. Now this same looseness, and this same insecurity, have been seen in other places. What has been done in several States of this Union in view of this matter? They have provided that bills which are issued and protected by the State as money, should be obtained from the State auditor, from the State authorities, whether they furnish security or not. The great State of New York a few years ago, passed a law calling in every dollar of money issued by the banks, and requiring it to be replaced by bills registered by the auditor of accounts. In relation to this whole difficulty and danger of bank issues, many of the new States have adopted into their Constitutions provisions protecting the people against fraudulent banking. New York, Ohio, Louisiana, Illinois, Indiana, California, and other States, have found it necessary to protect the people from banking issues—by putting a provision of this kind into their Constitutions. [Here the hammer fell.]

Mr. SCHOULER, of Boston. I have listened with great attention to the remarks made by the gentleman from Charlestown, (Mr. Frothingham,) but I do not intend to make an argument by way of reply, or discuss the question at all. I rise merely to ask whether the resolve passed the other day, and which was reported by the gentleman from Conway, (Mr. Whitney,) which forbids the legislature from incorporating any special corporations for all time to come, does not cover the whole ground presented by the resolution of the gentleman from Charlestown. It seems to me, that the order we have been discussing today is altogether unnecessary, because it covers the same ground with that adopted the other day. I would ask the gentleman if the present resolution does not cover the same ground precisely with that passed the other day, prohibiting the legislature from passing any acts establishing private incorporations.

Mr. FROTHINGHAM. Perhaps the gentleman was not present, but I think I alluded to that matter in the outset of my remarks, when I said that in my judgment the action already had by the Convention did not touch the very thing, the vital principle, the core of the whole matter—the principle of security.

Mr. SCHOULER. I supposed it was vital and right to the core of the thing, to prohibit the

legislature from making any new banks; and I think the resolution adopted the other day, will have that effect. Two years ago we rechartered all the banks then in existence in Massachusetts, and I believe the gentleman from Charlestown voted for those banks. The same year we passed a general banking law, similar in principle to that which the gentleman has so ably advocated to-day. It was considered a sort of compromise with the bank people; but it is rather singular, nevertheless, that the very legislature which passed this general banking law, also rechartered every bank which was in existence in Massachusetts, for twenty years; and the charter of every bank now in existence runs on until the year 1870. As it is, you must remember that we may have one or two Conventions to revise the Constitution before that time arrives; and I would advise gentlemen to keep this matter out of the Constitution. Let us go on as we have done, and not incorporate a provision into the Constitution which will deprive the legislature of chartering any more new banks, thus giving the banks now in existence, a perfect monopoly of the whole business until 1870. The banks that are rechartered, are subject to all the duties, liabilities, requirements, and restrictions, contained in such acts as are now in force, and such other acts as may hereafter be passed by the general court in relation to banks. I, however, do not intend to oppose this resolution, because if I oppose it, it will be very sure to go; neither will I give it my support, because then it might be lost. I have always considered, that, under this general banking law, the whole issue of a bank is founded upon credit, just the same as in banks specially incorporated, only that it is a different kind of credit. Under the general law, what are called state and city stocks are used, but they are merely the representatives of wealth, and are merely notes payable at the expiration of a certain time; so it is with the paper which banks discount. I have no doubt that the notes of certain merchants in this city for $2,000, are just as good as the scrip or paper of a State. But I did not intend to make a speech, and must close my remarks. I merely rose to suggest that the resolution which we passed the other day, covered the whole ground; and if so, I do not see any necessity for incorporating into the Constitution another provision of a similar character, unless gentlemen desire to make the matter doubly sure, that the banks now in existence shall have a monopoly of the business until 1870.

Mr. HOOPER, of Fall River. The second resolution, the gentleman from Boston, (Mr. Schouler,) will find, embraces a subject which the resolution passed the other day does not touch. The first resolution covers the same ground, perhaps. I wish to offer the following amendment in the shape of a proviso to the second resolution—the most important one now under consideration:—

*Provided*, that no note or bill of less denomination than $10, may be issued as currency after the year 1860.

While I most fully concur in the remarks of the gentleman from Charlestown, (Mr. Frothingham,) it appears to me that the resolutions do not go far enough, that they do not remedy the evils which he has pointed out so forcibly, the evils arising from a paper currency.

I would also suggest to him, that the amount of stocks of a character that may be pledged for the redemption of bills, will not, in all probability, be more than sufficient to serve as a basis of a sufficient issue of bills of the denomination of ten dollars and upwards, to answer the demands of mercantile transactions. The suppression of bills of a lower denomination, and a substitution of specie to be used in the minor transactions of business, would go far towards producing steadiness, and remedying those evils. If the banks are to go on as they now do, I think we shall have all the evils over again that have ever attended the issues of a redundant paper currency.

It strikes me, that our friends of late years have lost sight of what was a few years ago a leading principle with the reform party of the United States, and that was, to infuse into the circulation a larger amount of metallic currency.

We have seen the paper currency constantly increasing, and we have seen the effects of it. We have seen a constant increase in the price of the necessaries of life when the currency has expanded, and a corresponding diminution of price when it has diminished, and thus labor has been robbed of its earnings. I say that it has operated constantly to rob labor, and enhance wealth, for labor is always the last to rise, and the first to fall.

In 1830, I think that there were only about sixty millions of dollars ($61,323,898) of paper in circulation. The necessaries of life and the means of living were then cheap. From that period up to 1836, the circulation increased, until it went up to one hundred and fifty millions, in round numbers. What was the effect of this great increase? It was just so much tax upon the labor of the country, collected for the benefit of capital.

If you turn to the statistics of the country,

and look at the amount of imports, you will find that they increased almost in the precise ratio of the increase of paper money. The whole amount of imports in 1830 was $70,876,920. Of cotton fabrics, $7,862,326; while in 1836 the total of imports was $189,980,035, and of cottons, $17,876,087. If you again follow up the statistics you will see the decrease from 1836 to 1840 in about the same proportion, when the paper circulation came down to about one hundred and six millions ($106,968,572,) and the imports to $104,805,891, and cottons to $6,599,330. The importations of the most highly protected articles, such as cottons and woollens, diminished under the decreasing tariff, which was then decried as being ruinous to the manufacturing interests.

It is thus seen that the total importations decreased in the same ratio in which the paper money decreased, till in 1840 they were, notwithstanding a decreasing tariff, but little more than half what they were in 1836, when the tariff was the highest. The whole amount of imports of the country in 1840, as we have seen, were a little over one hundred and four millions of dollars, and the paper circulation was only about one hundred and six millions of dollars; while in 1836, with a paper circulation of one hundred and fifty million dollars, the imports had run up to the enormous amount of one hundred and ninety millions of dollars.

This shows that the importations decreased under a decreasing tariff, and decreased simply because the paper circulation decreased.

What was its effect upon labor? To my knowledge, laborers in 1836, when they were receiving the highest wages which they had ever been accustomed to receive, were not able to live near as well as in 1840, when the amount which they received for their labor was nominally far less. The amount which they received in 1840 for each day's labor, purchased more of the necessaries and comforts of life than in 1836, although the amount nominally was then much less.

What is the state of facts now? The paper circulation has been on the increase again ever since 1843, and I suppose at this time, that it is fully equal, here in Massachusetts at least, to what it was in 1836; and you find that the price of everything has risen, and is rising in a constant ratio with this expanding currency; but you do not find that the laboring man can live any better upon the proceeds of his labor now than he could in 1841, 1842, 1843, and I question whether he can live as well as he could then.

Now, it seems to me there should be something to regulate this matter; something to prevent these enormous fluctuations of this circulating paper medium, so that it shall not expand, as it did from 1830 to 1836, from $61,000,000 to $150,000,000, and then contract down to $106,000,000 in 1840, the prices in the same period fluctuating in the same ratio. I know of but one mode of reaching this difficulty, and that is, to infuse into the circulating medium of the country a larger proportion of specie. When this subject was agitated, at the time we were laboring under these great evils, and the independent treasury was put into operation, as a partial remedy, it was urged by our opponents that there was not specie enough in the world to supply a currency, and that for this reason, it was necessary to have a paper medium. They argued that there was not a sufficient supply of specie to meet the demands of a currency, without a most ruinous depression of prices. Supposing that argument to have been good then, which it was not, is it good now? What is the fact? We find that now, we are in the receipt of something like fifty millions of dollars annually, of gold, which is the product of our own territory. There never can be a more favorable time, or a better opportunity of beginning to infuse into the circulation of the country a larger proportion of specie. But for this large production of gold, which simply passes through the country in its transit to the other side of the Atlantic, I do not believe that even now the banks would continue to pay specie for three months. If that supply of gold were to be cut off, you would find there would be a collapse as great and severe as that of 1837. There is every indication of it. Look at the returns as to the amount of specie in the banks, compared with the amount of paper in circulation. Is not the difference as great as it was in 1836? I have not been able to examine the statistics on this point since the subject came up; but my impression is that the disproportion is quite as large now as it was then. The same causes exist now that existed then, over importation produced by high prices, caused by an inflated currency; and, but for the influx of the precious metals which are being sent across the Atlantic to pay balances, you would immediately have a pressure in the money market, and a collapse.

Now, it seems to me this is the proper time to start a reform in this respect, and one which is more demanded for the interest of labor than any other. The value of specie, it is true, will fluctuate and affect prices somewhat, at different times, and in different places; but, like the waters of the ocean, it will always find its true level by the laws of trade; while the paper cur-

rency is like the atmosphere above it, subject to whirlwinds and tornadoes continually, and scattering ruin and desolation in its track. If we wish to have business steady, and prices stable, let us make our currency, for the most part, of value only, which shall fluctuate only as the laws of trade fluctuate, according to the principle of demand and supply. Now is the time to check this evil, and retain a part of the gold which is flowing through the country, and make it a part of the currency which is to circulate from hand to hand.

Sir, in England it was found that the circulation of a paper currency was inconsistent with the best interests of society, producing fluctuations too ruinous to be endured, and they have reformed it, so that at this day no laboring men are ever paid for their services in paper money. They are uniformly paid in specie. I have seen many of those who have been mechanics and laborers in the manufacturing establishments of England, who tell me that they never knew an employer to pay his laborers in paper money. The paper is for the trading and mercantile community, and to such it is a convenience that may well be granted to them. But these extreme fluctuations to which we have been heretofore subjected, have been so ruinous in their effects, that we should be warned for the future. That which has been, will be again, under like circumstances. The great proportion of paper, compared with specie, produced the enormous fluctuations, and the suspension of specie payments by the banks of but a few years ago—evils, to the recurrence of which we shall be continually exposed so long as the present system shall continue to exist. I hope we may adopt his amendment, in order to prepare the way for the change, which I think should be somewhat progressive, so that the community may not be shocked by it, or experience any inconvenience from it. Above all, it is proper that we should commence this reform in Massachusetts, for if we commence it here, we have every reason to expect that other States will follow our example. Massachusetts is doing more at this time than any other State in the Union, to flood the country with paper money. At this very time her banks are scattering their bills all through the West, and particularly those of a small denomination, so as to render nugatory the laws of several of the States against the issuing of small bills, and thereby driving specie out of circulation, and out of the country. Adopt this amendment, and you will remedy these evils. The day is put so far ahead that measures will be adopted to prepare for the change in season to prevent any injury to the public.

Mr. FRENCH, of Berkley. I am in favor of the amendment proposed by the delegate from Fall River. We want something to protect the people. Notwithstanding all the gold and silver that we are now in possession of, we are not worthy to have any other currency than a parcel of shin-plasters. As I observed the other day, you may go out into the city or country, and they will all tell you that they are embarrassed and troubled exceedingly about making change in their daily business. That is right, just as it should be, so long as the people are content to sit still and let the banks control everything. So long as they are satisfied that the banks shall keep them from using any other currency but paper, that is just what the people deserve, exactly, and they ought not to complain.

Sir, let us look a little at the facts about this paper currency which we are compelled to take. If I recollect right, in 1842 we had the highest tariff, perhaps, that we ever had in this country, and under that tariff more goods were imported into the country than at any other period. And why was it so? Because the expansion of the currency had raised the prices fictitiously, and foreigners were able to come into our country and sell their goods and pay the duties, and still make a fair profit. And that was by the operation of the currency. Why is it that trade is rendered a lottery; that it is not the most prescient man, the man who foresees or looks fartherest, who is to be the most successful trader? But the most reckless, the most ignorant of trade, the least qualified to trade, are just as likely to succeed as the men who have the most prescience and the best calculation. Why? Because they are dependent on the fluctuations of the currency for their success. One man purchases his goods on an expansion of the currency, comes home and goes to trading. Another man on the opposite side of the way, goes and purchases his goods on a contraction of the currency. And what is the consequence? He purchases his goods twenty per cent. cheaper than the other one did, and only because of the different states of the currency when the goods were purchased. Now, is this the best currency we can have in our country?

Another objection to this kind of currency is, that it is not a measure of value, and cannot be made so. And I sometimes think that a man never paid his debts with paper money, in his life. It is not a measure of value. A man may pay another man who holds a note against him a hundred dollars. The man is willing to receive it and all is fair; but when the man has got his hundred dollars he has not got his pay. Why? Because it may be worth a hundred dollars, or

it may be worth seventy-five dollars, or it may not be worth anything at all. All the transaction between the parties is just the exchanging of the evidence of one debt for the evidence of another. I hope that we shall begin to do something in order that we may get a better currency, for in a mixed currency it always happens that that which is of the least value will displace the more valuable and drive it out. I hope that the amendment of the gentleman from Fall River will be adopted.

Mr. WALKER, of North Brookfield. Mr. President: The proposition before us, according to the resolve reported by the Committee is, "that the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws."

"That the legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued, or to be put in circulation as money; and shall require ample security for the redemption of such notes in specie."

I suppose the important principle contained in these resolves is included in the last clause, which "requires ample security for the redemption of such notes in specie."

That is the great idea which, I suppose, the gentleman from Charlestown, (Mr. Frothingham,) has in view, in bringing forward, as the chairman of the Committee, these resolves. Now, Sir, I am satisfied that the measure is a very important one; that we should have a general banking law, and that all the notes issued by banks created by that law, should be secured to the public; because Massachusetts has suffered, and especially the poorer class of people, upon whom the loss of broken bank bills principally falls.

The industrious classes are not judges of bank notes or bills, and do not know what banks stand the best. But business men do know. I have been a business man, and I know that the bills of suspected banks are always deposited before the banks close. I know that suspicions arise respecting certain banks in times of pressure, and certain bills are always got rid of by the knowing ones as soon as possible. They are kept in the hands of laboring men mostly, and, consequently, the losses by the failure of a bank commonly fall on that class of people to a great extent. Massachusetts has lost many millions in this way; and yet, we have the best managed banks, on this system, in the whole country.

It seems to me that we should settle the matter now, so that the people shall be, hereafter, secure against the losses so far as any new banks are created. What will be the effect of the proposed measure? Simply this: that banks will be established, hereafter, by those who have money to lend. Now they are generally got up by those who want to borrow money. I hold it to be very desirable, that those who have money should establish the banks, and not those who have not.

I say that losses have occurred because banks have failed from time to time; and what has happened may happen again.

At present, all is fair weather, and these are halcyon days of banking. Never were larger dividends made than during the last year, amounting, on an average, through the State, to almost eight per cent., as is shown by the last bank returns. These dividends are made by the large circulation, and by exchanges charged upon bills discounted, and the advantage of large deposits.

By examining these statistics, we find that the whole circulation of the banks in this State, in September last, was over twenty-one millions; amount of specie, a little over three and a half millions—equal to within a fraction of six dollars in bills, to one of specie. The whole amount of circulation and deposits, was over thirty-six millions, and this amount forms the "immediate liabilities" of the banks, which they may be called upon to pay, at any moment, and to meet which, they have but three and a half millions of specie. And this shows plainly, that the banks owe, on demand, over ten dollars for every one dollar they have in gold and silver. This is the true position of affairs. It may be contradicted, but it can never be disproved; and all the talk we hear about "specie funds," does not alter the matter at all, so far as this question is concerned.

Now, it must be evident to every one that this is a critical state of things. It cannot be otherwise. Any individual who owed thirty-six thousand dollars, all on demand, and had only thirty-six hundred dollars to pay it with, we should say, stood in rather a precarious situation; and yet that is just the position of the banks.

But if we farther look at the several banks, the case is still more striking. Take the last abstract, and you will see how the individual banks stand with regard to specie. As I happen to have my eye on some of the figures relating to the country banks, I begin with one that has twenty-five dollars in circulation to one of specie; the next has sixteen to one; another has forty-four to one; another twenty-eight to one; and one, I find, has sixty-four dollars in bills, to every one in specie; and including the deposits, this particular bank has over ninety dollars of immediate liability, to every dollar of specie. And the country

banks, on an average, have over twenty-two dollars of immediate liabilities, to one of specie.

I know it is said very ingeniously, that these country banks have funds deposited in the banks in Boston. Allow it to be so; but what is the condition of these Boston banks? How much specie can they help the country banks to, in case of need? Let us see. I find that the Boston banks have in circulation two dollars and ninety-eights cents to one dollar in specie, almost three dollars in bills, to one of specie, besides all their obligations on account of deposits. It seems to me they are not in a very good condition to help their country cousins. If a pressure comes, it will be about as much as they can do to take care of themselves. Some of my friends here are presidents of Boston banks, and know whether I state the truth in this matter or not.

I think, from these statistics, we can distinctly see the basis these banks rest upon; and now the question occurs, what makes them at all secure? Their only present security is, that there is no great demand for specie to ship abroad. We receive from California just about the same amount that is required for foreign shipment, at the present time. By the way, the particular amount of specie thus received does not affect us any more than so much additional amount of cotton or any other export would; for if we had an equal additional amount of cotton to send to England, it would be the same thing to us as sending specie. It merely pays our indebtedness there, and the principal effect upon our currency, of the influx of gold from California, is simply this—it inspires general confidence.

This being the case, what must inevitably happen? Just what has happened hitherto. When the balance of trade does come against us in Europe, we must export our specie from the banks; and when that time comes, how much can we spare? Three millions and a half is all that we have in Massachusetts. Suppose that there is a balance against this country of thirty or forty millions; that may be the case, and that will be the case sooner or later, after all the cotton and other produce we send abroad. Every man knows, who is any financier at all, that this time is coming, and that there will then, of necessity, be a demand for specie to ship to England; and then what will happen? Sir, in an instant, in the twinkling of an eye, the bank discounts will be closed—they will shut right down—they cannot help doing so. I have seen the time that when I went to the bank in Boston in the morning to do business, all was easy and fair in the money market; but before two o'clock there was no discount to be had. What was the reason of it? Why, Sir, information had been received from New York that there was a great demand for specie abroad, and, of course, the New York banks sent right on to Boston for specie, so far as they had claims in the Boston banks. If the Boston banks had out three dollars in paper for one in specie, as they now have, they would feel at once that they must stop all discounts, and bring in all their resources, in order to sustain themselves. What follows then? Money begins to be very scarce, and men who have notes to pay are turned into the street to hire money at any price at which they can get it—perhaps eight, twelve, twenty, or even as much as thirty per cent. interest—in order to maintain their business reputation and meet their engagements. When money is plenty, these men are tempted to borrow of the banks, and very largely; and when the time of pressure comes, the banks cannot help them, for they are themselves the most feeble members of the community.

Now, I do not blame the bank directors in this matter; they are obliged to take the course they do in self-defence. It is incidental to the system—they cannot help it; but any man can see that it must be a terrible system which produces such results; which allures men to make promises to pay certain amounts at certain times, and when these obligations become due it cannot relieve them. The great plentifulness of money enables speculators to create an artificial rise in property, and induces people to increase their business operations and expenses; but when reckoning day comes, they are left high and dry. Everybody who understands the matter, knows that this is the legitimate result of our present system; and is it not a most pernicious one? The system is so complicated that but few persons understand it, yet it may be resolved into one or two general principles. The leading idea is that our banks have the power to issue their promissory notes as money. Now, if those notes did not exceed the amount of specie held by them, they would be the representatives of real money, or in more scientific language, of value money; because gold and silver possess intrinsic or absolute value, like wheat or cotton, and for the same reason, namely, that they cost labor and are objects of desire, and those two conditions combined always and only give value to any commodity. But the banks do not limit themselves to the issue of an amount corresponding to their specie. They go beyond that limit as far as they dare, and issue their promises, and these constitute credit money. That is the proper term for such money; so, then, our currency is in fact a mixed one, consisting of value money and credit money. Now, when a pressure comes,

when specie is wanted for export, what must happen? Why, if all the banks of Massachusetts owe, as they now do, ten dollars for every one dollar they have in specie, they must contract their circulation in proportion. That is, if the Massachusetts banks are called on for one million, they must contract the currency ten millions. This is the great objection to such a currency—the contractions must be so great, so sudden, and so necessarily injurious to the community.

It is, then, the elasticity, or the power of expansion and contraction, which our currency possesses, that makes it at once so unstable, insecure, and pernicious in its character. As certain as there is an expansion, there must be a contraction, and the more plentiful money is at one time, the greater will be its scarcity at another. Natural fluctuations in the currency there must ever be, and like the tides of the ocean, they are salutary; but under our system they receive an artificial extent and intensity that causes the most terrible revulsions and the most disastrous consequences.

Every bank director in this room—and I suppose there may be two hundred of them, more or less—knows that such revulsions under our present system, inevitably come. It has happened hitherto that it has come about once in seven years, which seems to be about a monetary cycle. Of course, if we could foresee the exact time, so as to provide against the evil consequences of these revulsions, it would not be so bad; but we can never know the precise time when they will occur. When they do come, however, as I said before, the Boston banks will shut down; then the pressure will begin to come upon the country banks, and they will stop discounts, too, and when they find themselves hard pushed, the most feeble ones will come down to the Boston banks for assistance, and say, "If you don't help us, we must fail." And the Boston banks, if they are satisfied that such banks are sound, will aid them, because they will know that the failure of one bank injures the circulation and the credit of all; that they have a common interest, and must hold each other up as long as possible. But in spite of all these efforts, if the pressure continues, one after another the rotten banks fail. When there are nearly one hundred and fifty banks, with such a tremendous circulation as the document in my hand shows, I ask, is it possible that some banks will not fail when there comes a crisis? It is not possible that it should be otherwise. Some will fail, and then the people will lose. Now, Sir, to guard against this loss is the object of the proposed measure. I admit, Sir, the banks go on as long as they can; they do not make a general suspension, if they can help it. They all stand together like brothers, not because they love each other so much, but because they have one common destiny. But the event will come at last; for they will all have to stop payment if the crisis reaches a certain point, as has been done at different times heretofore. But up to a certain point they can stand; and in order to save themselves they will sacrifice the business community. The banks can all stand safe and secure so long as they can keep the business community before them to meet the losses; but if there comes a great pressure; if there is a continued run upon them for specie to ship abroad, as there was in 1836 and 1837, the banks cannot keep themselves going, and so they will all stop.

This state of things will return at different intervals, just so long as you allow banks to issue bills without reference to the amount of specie in their vaults. As long as you do not limit them in this respect, it is no sort of use to say that you will not excuse them if they all suspend specie payment together. Sir, you will excuse them; you must excuse them, for when they stop it is the best thing they can do. They ought to stop under such circumstances; and the fault is to be charged to the bad system under which they act.

All these evils are inseparately connected with the system; and I submit, Mr. Chairman, that we have gone on with it as long as we ought to. I do not expect that the whole system is to be done away; I do not expect any reform of that kind at present, so I hope no one will be alarmed on that score. I have made no such intimation. The measure before us is simply one of precaution, for the benefit of the people, and it will hurt no legitimate banking at all. It will not injure any bank which is now in operation, that is certain; and it will merely prevent any future bank being got up by persons who have not got money to loan.

The time has not yet come when we are prepared for a thorough reform on this subject. There is nothing in this world that the people love so well as they do banks—there is nothing that they like the sight of so well as they do paper money. And paper money, if it is only equal in quantity to the value in money which it represents, is a great convenience; but whatever is over and above the specie in the vaults, is credit money, and all credit money is, in my opinion, a curse. There is no necessity for it at all. We have arrived at an important epoch in the history of the currency. By the discovery of the Californian and Australian mines, large quantities of the precious metals have been added to the circulating medium of the world; and one would suppose that the effect of this ought to be to drive paper money out of

circulation; but instead of that, what is the consequence? The more gold that we receive from California, so far as it remains in the banks, the more paper money we have; for the banks, on an average, through the nation, issue about three dollars of paper money for every dollar of California gold they get; and some issue ten or twenty dollars for one, or even forty or fifty, as the case may be. Now, Sir, nothing can be more unwise than such a course. The time never was when there was not specie enough in the world to do the business of the world. Before the discovery of the California mines, there were ten thousand millons of gold and silver in the world, only three-fifths of which was in currency; the rest was in plate. This fact shows that there was enough of these metals for the purposes of the currency; for if the people had wanted it in currency, it would have been converted into currency.

In this country we have the worst paper system in the world—I mean the worst voluntary system. Russia has a forced paper money system that may be worse than ours; that is owing to the despotism of the emperor, who has the whole regulation of the matter, and who has forced it upon his people; but, for a voluntary system, ours is the worst in existence. The gentleman from Charlestown alludes to the banks in Scotland, and he says that those banks are safe. They are so, but the system of Scotland is the next worst in the world to ours, because it most nearly resembles ours in being the most liable to expansion and contraction. That is the great characteristic feature of both their system and ours. The currency of New York, one year, was twenty-four millions; the next year it was twelve millions; the next year, eighteen; the next, nine. How can people go on and do business with a currency fluctuating in that way, by the mere expansion and contraction of paper money? This expansion and contraction in the currency insidiously robs the masses of the laboring people of no small share of all they can earn; and this, too, is what ruins so many of our business men. Thousands and thousands of these men are ruined in this way, without knowing the cause. They think, and say, it is owing to "hard luck, or bad times;" but the true reason is to be found in the fluctuation of the currency. A man buys goods when the currency is flush; and if it so happens that he has to pay for them under a contracted currency, he is ruined, unless he is a rich man, and can afford to sustain a heavy loss. Hence, a great proportion of all our failures are caused simply by the expansions and contractions in the currency. I insist, therefore, that this is a great evil, and the greatest evil under which we labor; and the effects of it are seen from the fact that we have more bankrupts, in proportion, in this country, than there are in any other in the world. We are a nation of bankrupts. I do not mean by this that we are more dishonest than other people, but that our currency system robs the people more effectually, and ruins more of our merchants, than the system of other countries. Scotland is the country where there is the next greatest number of bankrupts, because it is next to us in the fluctuating character of its currency. In England there are less still, because its currency is more stable; and in France fewer still, for the same reason.

The gentleman from Fall River said, that a recent law of parliament, passed, I think, about 1845, has limited the issues of the bank in the manner in which we ought to limit our banks, so that there should be a certain proportion between the specie and the bills. That was a measure of vast importance. I think it was carried by Sir Robert Peel, and it showed the wisdom of the British government. The Bank of England would have failed at a little time previous to this, if it had not been for four millions of specie which it borrowed from the Bank of France; and the British government, seeing that result, and seeing to what great peril the whole currency and commerce of England had been exposed, passed a law establishing a certain proportion between the circulation of the bank and the amount of its specie. That is just what we need here, and what we shall get, I suppose, when we have passed through three or four more revolutions, and the people get their eyes open. I do not expect it now—there is not much chance for it here. The amendment of my friend from Fall River, proposing that no bills of less than $10 should be issued, is a good amendment; but he might as well expect to get the most absurd proposition in the world carried as that. If he should make a proposition that we should all go home without any pay, he would get about as many votes for it, I presume, as he will get for his amendment. But, notwithstanding that, it is a sound proposition, and one that ought to be adopted, and I shall vote for it. It would not do much good to have a single State adopt it; but if other States would do the same, an important object would be attained. It ought to be a great national movement, and then all these little miserable bank notes might be driven out of circulation. I hold that paper money should never be used by men in paying off their laborers. The gentleman from Fall River has said that paper money is never so used in England, and that is true. You may travel all over that country, and spend months there, without seeing a bank note, as I know by experience.

Now there is, in fact, gold and silver enough for all business purposes; and I should be glad if we could get rid of all these one, two, and three-dollar bills. It seems to me that the wisest course would be, when the people become satisfied of this, to have it provided by the national government, in obedience to the demand of public sentiment, that all bills, under five dollars, should be excluded after the first year; that all under ten dollars should be excluded the next five years, and all under twenty dollars the next five. I think there is no need of any paper money of a smaller denomination than twenty dollars.

I am not disposed to detain the Convention longer; but as the measure has been brought forward, I wished to bear my testimony in favor of it; and I shall be happy to vote in favor of the amendment of the gentleman from Fall River,—not that I believe it will be carried, for the time has not yet come, but because I believe it to be right.

Mr. STETSON, of Braintree. I do not purpose to detain the Convention for more than a few moments; and will, even now, give way to any gentleman who is desirous of speaking to the question, especially to any one who desires to speak against the Report of the Committee; because, before I make the remarks I have to offer, I should like to hear what objections, if any, can be urged against it. As yet, none have been urged. The arguments have been all on one side —that is, in favor of the adoption of the Report. As I differ from my friend who has just spoken, in regard to matters of finance, I wish to state my views upon the subject, and to set forth what I understand to be the position of the case. I am not disposed to speak against corporations or charters, of any character. I maintain that corporations may be beneficial; that they have been beneficial; and that Massachusetts has built herself up—the manufacturing interests particularly —by corporations. My position is this: that our laws should be so constructed and framed that any body of persons may associate themselves together in a corporate capacity. The principle of corporations, whether composed of a large or small number of persons, is one and the same thing in itself. A corporation may consist of three or four persons, or it may consist of only two. It may consist of any number of persons incorporated under a charter by the legislature, or of two or three persons united together in a partnership. They are both the same; the only distinction being, that there are some of these bodies corporate who obtain their acts here, that are monopolies, unless the public themselves have not at all times the like privilege of associating themselves together. I maintain, therefore, not that we should restrict the incorporation of any number of persons, but that the matter should be left free in regard to the incorporation of banks as to any other incorporations; and that, I take it, is the question here—whether we will leave persons as free to incorporate themselves for banking purposes as we do in regard to any other business. Now, if I understand this matter rightly, if only a few of these corporations are permitted to exist with special privileges, we say that they are monopolies; and they are, unquestionably so. A chartered bank, as it exists by the terms of any special act of the legislature, or by any provision in the Constitution in regard thereto, is a monopoly. Now, I suppose, the object of the Convention is to do away with all systems of monopoly by throwing the whole matter open, so that, in regard to banking, as to other business, every person may go into it who pleases. After passing a law restraining corporations from injuring private persons, and adopting such regulations as will save the public harmless from the issue of bills, I think that the State has not only done all that it can do, but all that it has a right to do in this respect, under a free government. I contend that banking should be just as free as any occupation in commercial life. It is a trade, if I may so speak, in itself—a science which very few understand. The object of the Report, it seems to me is, that the public may be secured against what the legislature gives these corporations authority to do, in issuing promissory notes; that they shall be secured upon a basis—something that can be relied upon in case of the failure of a bank. This, I apprehend, is the question, and if so, I confess that I can see no objection to such a purpose.

I maintain that the present system of banking is a growing evil, and that special legislation in regard to this matter is an evil which will in itself bring ruin upon the community—that is, that the system is so involved, being a monopoly, and in no way restrained, so that the State can reach it by any enactment of law. Now, after the State has done all that it can do in regard to preserving the rights of persons, I maintain that the business of banking should be left like every other business in the circle of trade. I hold that this thing will regulate itself. If it is overworked, it will regulate itself, as all other commercial operations do. For all these matters, there is a law that is higher and stronger than any statute that can be enacted to regulate the laws of trade. No law that any legislature can enact, can regulate trade. It regulates itself.

I do not, however, propose to go into this ques-

tion. I only maintain that paper currency, if so restricted as to be made safe, is a useful currency; and the existence of it, I think, will be perpetuated by the use of it. If it is well restrained and secured, I can see no evil in it. I am not an enemy to paper currency, made and properly regulated by law. It is a useful medium in itself, and its conveniences are felt in every branch of trade. Upon this question, therefore, I do not wish to enter. I only wish to allude to one objection which has been made to the Report, by the gentleman from Boston (Mr. Schouler). I did not hear the whole of his remarks; but as I came into the hall, I understood him to say that the resolution which passed the other day, in relation to acts of incorporation, covered the whole matter. Now, I entirely dissent from that. I do not think that it covers any part of the question, neither do I think the resolutions passed the other day, have any binding effect at all in relation to the subject of banking. I think they are very similar to the provisions of an act which was passed a few years since, being an act to create corporations under general laws. I believe that I opposed that act in the House of Representatives then; I maintained that it was, *de facto*, a special act; that it would be of no binding effect, and would not cure the evil, because it did not cover the matter; and my friend from Boston was willing that it should remain on the statute book, for the very reason that it had no binding effect; that it was merely a dead letter upon the statute book, and, in regard to banking, that it was precisely the same as a special act. A free banking act was passed a few years since, and the argument then was that it would not be used. True, it has not been used, and for what reason? Because the State, in its sovereign capacity, gives a monopoly to certain corporations who have in themselves the power to make twice the money that they could make if they had not the advantage of their special charters. Now, what association of men would incorporate themselves under this free banking act, and submit to be restricted, and give security for their bills, when they could come here and obtain an act whereby they could pledge their credit to any amount they pleased, without any restriction? That law will never be of any avail, till some restriction is imposed by the legislature on these special corporations; and then all persons who want to commence banking, can do so under a general law, and all will be upon an equality.

My friend from Charlestown read an extract this morning from a speech of the Hon. Edward Everett. With your permission, I wish to read an extract from a speech just previous to the explosion of 1837, which was delivered in this hall by the same able gentleman.

He says:—

"The banks form a class of corporations distinguished from all others, by a privilege of a very extraordinary character. When a company of citizens come before us, and ask to be incorporated as a bank, they ask us not merely to allow them to associate themselves together for the purpose of lending money, but they ask us the privilege of allowing them to associate themselves together in addition, for the power to create money out of nothing—that is, out of blank paper, for their own benefit; equivalent to an outright gift of a sum of money equal to the average amount of circulation after deducting the average amount of its specie on hand. * * *

"The easy indifference with which the legislature has been accustomed to grant these immense bounties, is somewhat singular, considering the scrupulous reserve that is commonly and very properly practised in regard to most other measures involving grants of money. Heretofore, when applications have been made for bank charters, the acts have been passed without hesitation, and very often without debate. * * *

"Sir, I ask whether it can be said with propriety, that a business to which we give these immense bounties, regulates itself? As long as the granting of a bank charter carries with it a bonus of $50,000, or $150,000, according to the extent of the circulation, there will never be a failure of applications. If you wish the business of lending money to regulate itself; withdraw from the banks the privilege of issuing notes. There will then be no danger of excess, and you may grant with safety all the charters that may be applied for. But, while the present system is pursued, it is perfectly evident that the banking system never will regulate itself; and that unless we mean to push it to an indefinite extent, we must fix ourselves where it is proper to stop. That we have already reached that point, and that it is high time to stop where we are, and gradually to retrace our steps, if we mean to avoid the danger of the most disastrous convulsions. It may still be inquired with propriety, whether we have a right to bestow this immense boon upon a few of the citizens in preference to all the rest. * * *

"The Constitution provides that no person shall enjoy any exclusive privileges; that all shall be equal before the law. And is it not a privilege to be able to create money for your own benefit, out of blank paper?"

That speech was made at a time when this House granted a large number of charters. I will not detain the Convention farther than to read another extract, and then I shall have done. About the year 1816, when the southern country was under the suspension of specie payments, and at the time when an application was before the House of Representatives for a charter for a United States Bank, John Randolph opposed that application, and he took occasion then to make

some remarks which have proved prophetic in regard to the bank. He says:—

"It is unpleasant to put one's self in array against a great leading interest in a community, be they a lot of land speculators, paper jobbers, or what not; but, Sir, every man you meet, in this House or out of it, with some rare exceptions, which only serve to prove the rule, is either a stockholder, president, cashier, clerk, or door-keeper, runner, engraver, paper maker, or mechanic, in some way or other, to a bank. * * However great the evil of their conduct may be, who is to bell the cat? who is to take the bull by the horns? You might as well attack Gibralter with a pocket pistol, as to attempt to punish them. * * * A man has their note for fifty dollars, perhaps, in his pocket, for which he wants fifty Spanish milled dollars; but they have his note for five thousand in their possession, and laugh at his demand. We are tied hand and foot, Sir, and are bound to conciliate this great mammoth which is set up to be worshipped in this Christian land. We are bound to propitiate it. * * * *

"It is as much swindling to issue notes with the intention not to pay, as it is burglary to break open a house. If they are unable to pay, the banks are bankrupt; if able to pay, and will not, they are fraudulent bankrupts. But a man might as well go to Constantinople to preach Christianity, at to get up here and preach against the banks."

I think that would apply very well to some of the members of our House of Representatives here.

"As to establishing this bank, to prevent a variation in the rate of exchange of bank paper, you might as well expect it to prevent the variations of the wind; you might as well pass an act of congress, (for which, if it would be of any good, I would certainly vote,) to prevent the north-west wind from blowing in our teeth as we go from the House to our lodgings."

This is the precise truth. The whole community is so interwoven in this matter, so interested in it, and the whole State of Massachusetts is so much incorporated into banks, that I think it is high time that we should cut loose from the system of granting special charters, and throw the whole matter open, and let every person be free to bank himself, if he has capital enough, or can obtain it by associating others with him. That is my doctrine.

Mr. FROTHINGHAM, of Charlestown. I wish to say one word in relation to this amendment. I agree with what has been said by the gentleman from Fall River, (Mr. Hooper,) as to the principle of it; but I would submit to him, that that is a question which had better be left, after all, with the legislature to settle. It seems to come more appropriately under that rule, than it does within the rule which guides us as to putting in matters into our organic law.

Another thing I remark, it seems to be at variance with the principle upon which the Committee have acted in relation to this matter. It provides that on and after a certain time there shall be no bank bills under a denomination of ten dollars, and therein it interferes with the present privileges of existing banks. The object of the Committee was to leave this matter entirely to the regulation of general laws, and not to put anything into the Constitution in relation to it.

Mr. LIVERMORE, of Cambridge. I have but a word to say in regard to this amendment. The effect of this amendment, if adopted, will be, that other States will derive all the benefit from the circulation of small notes under the denomination of ten dollars. In the State of Ohio, the law is that no bill under the denomination of five dollars, shall be issued by any bank of that State. What has been the effect? Hundreds and thousands of dollars of money, in bills of less denomination than that, have been sent from this State within a few months past to purchase produce in that State. Now, Sir, I think if we want to restrain the circulation of our banks, and allow the banks of other States to come in and supply us with our smaller circulating medium, we had better adopt the amendment offered by the gentleman from Fall River. I had intended to say a few words upon the whole question before the Committee, but I do not think it worth while now to take up the time of the Convention.

Mr. HOOPER, of Fall River. I should be glad to accommodate gentlemen if I could, but, Sir, the very consequences mentioned by the gentleman last up, furnish the strongest argument in favor of putting such a provision into the Constitution. At this time no State in the Union is circulating so many small bills in other States as Massachusetts. It is a constant source of complaint, and they say they cannot reform the evil so long as Massachusetts is flooding them with small bills. If we commence here, the reform will go on throughout the country, but it cannot so long as Massachusetts continues her present course. I hope the amendment will be adopted.

The question then recurring upon the amendment offered by the gentleman from Fall River, (Mr. Hooper,) it was taken, and there were, upon a division—ayes, 27; noes, 85.

So the amendment was rejected.

The question then recurred upon the adoption of the resolves as reported by the Committee, and being put, it was decided in the affirmative—ayes, 130; noes, 28.

So the resolves were passed.

Mr. DAVIS, of Worcester. I move that the Committee rise and report the resolves to the Convention with a recommendation that they do pass.

The question was taken, and the motion was agreed to.

The Committee accordingly rose, and

IN CONVENTION,

The chairman of the Committee, (Mr. Butler,) reported that the Committee of the Whole had had under consideration, according to order, the Report of the Special Committee on the subject of Banking, and had instructed him to report the resolves to the Convention with a recommendation that they do pass.

The Report was accepted by the Convention, and the resolves were ordered to a second reading.

Mr. EARLE, of Worcester. I move that when the Convention adjourn, it adjourn to meet on Monday next, at ten o'clock.

The question was taken, and the motion was agreed to.

*Reconsideration.*

Mr. BIRD, of Walpole. I move that the vote by which the Convention carried to their final passage the resolves in relation to elections by plurality, be reconsidered.

The PRESIDENT. The motion will be entered upon the Orders of the Day for Monday next.

Mr. BIRD. I now move that the motion to reconsider be laid upon the table.

The question was taken, and the motion was agreed to.

So the motion to reconsider was laid upon the table.

*Sectarian Schools.*

Mr. PARKER, of Cambridge. It will be recollected, Mr. President, that when the Report of the Committee on Sectarian Schools was under consideration, I read, for the information of the Convention, an amendment which I proposed to offer when the amendment then pending was disposed of, so that mine might be in order. That subject was subsequently laid upon the table, and I desire to offer anew the resolution which I then proposed, somewhat modified, so that it may be laid upon the table and printed.

The resolution is as follows:—

*Resolved*, That 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.

The resolution was laid upon the table and ordered to be printed.

*Leave of Absence.*

Mr. FAY, of Southboro', from the Committee on Leave of Absence, presented a Report, granting leave of absence to Messrs. Bliss, of Hatfield, Taylor, of Great Barrington, and Kellogg, of West Stockbridge.

The Report was accepted and adopted.

*Justices of the Peace.*

Mr. GRISWOLD, for Erving. I move that the Convention resolve itself into the Committee of the Whole upon No. 57 of the calendar, in relation to election of justices of the peace and justices of inferior courts.

Mr. BRIGGS. I suggest to the gentleman that the chairman of the Committee which reported the resolves, (Mr. Bishop,) is anxious to be here when that subject is considered, but he is not able to be here now. He feels a deep interest in this matter, and I hope it will not be now taken up.

Mr. GRISWOLD. I understand there is no other business that can now be taken up, and I suggest to gentlemen that amendments can be offered at the second reading of the resolves.

The question was taken, and decided in the affirmative—ayes, 90; noes, 52.

The Convention accordingly resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Morton, of Andover, in the chair, and took up for consideration the following resolves:—

1. *Resolved*, That it is expedient to amend the Constitution, so as to provide that the electors of the several towns shall elect, in such manner as the legislature may direct, justices of the peace, whose term of office shall be three years, and whose jurisdiction shall extend throughout the county in which they may be elected; their number and classification shall be regulated by law; they may be removed, after due notice, and an opportunity of being heard in their defence, by such court as may be prescribed by law, for causes to be assigned in the order of removal.

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove

any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

3. *Resolved*, That it is expedient to provide in the Constitution, that, in case of vacancy, by resignation or otherwise, of any state, county, or district officer, whose election is provided for in the Constitution, the Governor shall issue his warrant to the mayor and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall happen; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill vacancies, until an election by the people.

Mr. CUSHMAN, of Bernardston. I move to amend, by striking out the first resolve, and inserting, in lieu thereof, Convention document No. 121, as follows:—

*Resolved*, That it is expedient to amend the Constitution, as follows:—

There shall be two classes of justices of the peace, viz.:

1. *Trial Justices*, who shall be elected by the legal voters of the several towns, for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers, and duties, that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2. *Justices of the Peace*, who shall be appointed, by the Governor and Council, for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpœnas, and the solemnization of marriages.

I believe, Mr. Chairman, there is a general feeling in the community that the office of justice of the peace has become too common, and therefore too cheap. My object in introducing the amendment, is to create a class of justices that will be of higher character, and possessing a higher degree of intelligence than the present one. By referring to the resolution which I propose to strike out, it will be perceived that it is proposed to elect all the justices of the peace for the term of three years. Now my objection is, that if a sufficient number of justices are elected to accommodate the people, the number elected must, necessarily, be quite large; and if the number elected be not large, there will not be a sufficient number to accommodate the people. I therefore propose that the justices of the peace be divided into two classes; the first to be called trial justices—an office of considerable importance, and to give to it the entire jurisdiction now exercised by justices of the peace, which extends to all cases involving claims to the amount of one hundred dollars, also the right of trial by a jury of six; and also to give them the jurisdiction which is now exercised by justices of the quorum, and commissioners to qualify civil officers. It will be perceived that the office of trial justices will be one of considerable importance, and if elected by the people, it seems to me that the people will be so careful and cautious, that judicious and discreet men will be chosen.

It also provides, that the justices now in commission will hold their offices during the continuance of their present commissions, and it diminishes their jurisdiction, so that as to all persons appointed by the Governor and Council, and also all those that now remain in office, it shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpœnas, and the solemnization of marriages.

It has been suggested to me, that there should be a clause, authorizing this class of justices of the peace to take depositions. I had supposed that, under the head of administration of oaths, would be included the taking of depositions. If that is not so, I should prefer adding such a clause.

I think gentlemen will see, that by this arrangement there will be a perfect system, one which will work well for the community, and one that can easily be carried out. Therefore, I hope it will be adopted, unless there are some very serious objections to it. I have consulted with several legal gentlemen, and also with others who have been acting justices in the Commonwealth, and they cordially concur in my amendment.

Mr. HATHAWAY. I would much rather that the matter had been discussed when the chairman of the Committee was present. Sir, matters that are worthy of being discussed in Committee of the Whole, and of being incorporated into the Constitution, must be of importance; and, however unimportant we may consider this matter of justices of the peace, I can assure you that the people regard it as a matter of great importance.

The complaint not only has been made, but has been reiterated over and over again upon this floor, and the difficulty has been felt, from time to time, ever since the formation of the Constitution in 1780, that the tenure of the office of justice of the peace was such, that when once appointed,

justices could not be removed; and many serious inconveniences have been the consequence of it. Many improper persons have been appointed justices of the peace, or from age and other causes, have become disqualified for the office, and unable, properly, to discharge the duties of the same. Much injustice and wrong have been the consequences, to the people, by continuing them in office after it was known that they were unfit and improper incumbents, or after they had become unable to discharge properly their duties; for there was no power under the Constitution, by which they could be removed, except by impeachment, which is too costly and troublesome a process. It has been said upon this floor, and I think very correctly, that when a justice of the peace once had his commission, no matter how incompetent he might be, and no matter how unfaithful in the discharge of his duties, he might defy the whole power of the government to remove him other than by impeachment. Well, Sir, there is something for which the gentleman from Bernardston has failed to provide, as the proposition, as I understand it, is to strike out the whole Report of the Committee, which carries with it, if the amendment is adopted, the provision in the Report for the removal of these officers.

Mr. CUSHMAN. I only propose to strike out the first resolve reported by the Committee.

Mr. HATHAWAY. I thank the gentleman for the correction; for, as I understood the chairman, it was to strike out the resolves reported by the Select Committee, and substitute the resolves submitted by the gentleman from Bernardston, as an amendment or substitute. If the proposition is merely to strike out the first resolve, my objection is, to that extent, removed. But, Sir, there are other reasons, as I stated before, on account of which I am anxious that the chairman and other members of the Committee which reported these resolves, should be here when the subject is discussed; for, however excellent the amendments that are offered, may be, I should like to hear an explanation of the resolves from the chairman, or some member of the Committee. I should like to have them explain why they have made a distinction between the election or appointment of justices of the peace and justices of the police courts, and also, why the distinction between the removal of justices of the peace and justices of these courts. They provide that the justices of the peace may be removed for sufficient cause, although they cannot, in any case, hold their office unless reappointed or reëlected, for more than seven years. Justices of the police courts, by the decisions of the supreme court, hold their offices for life, or during good behavior; yet there is no provision made by which they may be removed, however incompetent they may be, nor is there any provision made for their appointment, unless they are to be classed with "inferior courts," and to be appointed by virtue of that expression in the Constitution. And why should you appoint these officers of an "inferior court" with a life tenure, if you limit the tenure of the judges of the supreme court to but ten years?

Now, Sir, I would have these officers made elective. Certainly, if you make your judges of probate elective, the justices of the police courts should also be made elective; nor should their time be longer than the term of the judge of probate. I should like to know from the chairman of the Committee, or from the gentleman over the way, (Mr. Cushman,) if it was intended that the provision for electing the justices of the peace or trial justices, was also to cover the election of justices of the police court? If such was the intention, I think a farther amendment should be made to the amendment proposed by the gentleman from Bernardston. It seems to me that if there are good reasons for electing "trial justices," that there are equally as good reasons for having the justices of the police courts elective, and for no longer term than "trial justices," and certainly such should be the course where their jurisdiction is only exclusive and coextensive with the town or city in which they are elected; which, I believe, is not always, but usually the case. I think there is one instance where the jurisdiction of the justice of the police court extends over two towns. I know, however, of no substantial reasons why they should not be included in the same category with trial justices, as to the mode of their appointment and tenure in office. But, Sir, the Committee who have had this matter in charge, I doubt not, have examined it, and they may be able to give reasons which may be satisfactory, for making a distinction; and hence I am unwilling, at this time, to offer an amendment I have prepared, or to go farther into the discussion of this proposition when none of that Committee are present. It is due to the chairman and members of that Committee, that we should give them an opportunity of defending their Report. For this reason, I am constrained to make the motion which I do now make, that the Committee rise, report progress, and ask leave to sit again.

Mr. HALLETT. I hope that motion will not prevail. I have prepared one or two amendments to the amendment of the gentleman from Bernardston, which I desire to present.

Mr. HATHAWAY. If the gentleman has any amendments to propose, I will withdraw the motion.

Mr. HALLETT. I then have two amendments, which, if incorporated in the proposition of the gentleman from Bernardston, will reconcile me to this plan. As has been stated, by the existing law, according to the decision of the supreme court, the justices of the police courts are recognized as holding a life tenure. Now, Sir, I see no reason why these officers should not be placed on a par with the justices of the peace, so far as their election and tenure are concerned. Certainly, it is hardly consistent to provide, as we have done, that even the judges of the supreme judicial court shall be limited to a term of years, and the justices of the police courts, shall be appointed for life. I therefore move to add as follows:—

Justices of the police courts shall be elected by the legal voters of the several towns and cities wherein such courts are established.

Mr. MORTON, of Taunton. I move to insert in the second paragraph, after the word "deeds," the words, "the taking of depositions," so that the proviso would read:—

*Provided*, That the jurisdiction of Justices of the Peace shall extend only to the acknowledgment of deeds; the taking of depositions; the administration of oaths; the issuing of subpœnas; and the solemnization of marriages.

Mr. CUSHMAN. I accept that amendment.

Mr. HALLETT. I now move to strike out the whole proviso of the second section, and to insert in its place the following:—

*Provided*, That the jurisdiction of Justices of the Peace shall not extend to the trial of causes, or the issuing of warrants.

The whole resolve would then read:—

Justices of the Peace, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of justices of the peace shall not extend to the trial of causes, or the issuing of warrants.

Mr. CUSHMAN. This is a matter for legal gentlemen to settle, I will admit; but it seems to me, that it will not be so plain as it is in the proposition as originally offered. Gentlemen will see, by looking at the section as originally offered, that the jurisdiction of the justices of the peace is made definite and clear. It prescribes distinctly that it shall extend only to the administration of oaths, the issuing of subpœnas, the acknowledgment of deeds, the taking of depositions, and the solemnization of marriages. Now, it seems to me, that if the amendment of the gentleman for Wilbraham is adopted, the jurisdiction, the power, the authority, and the duties of the justices of the peace will be left undefined. I think, therefore, the amendment to this section had better not be adopted.

Mr. BUTLER, of Lowell. I find my mind very strongly inclined to favor the amendment of the gentleman for Wilbraham, (Mr. Hallett,) for precisely the same reason that the gentleman from Bernardston, (Mr. Cushman,) has given for rejecting it. The amendment of that gentleman makes the jurisdiction of the justices of the peace too definite. It does not allow them to do anything, except to administer oaths, acknowledge deeds, take depositions, issue subpœnas, and solemnize marriages. Now there are a great many other things which the justice of the peace ought to be authorized to do. In the first place, he is to get as near to a riot as he can, and order them to disperse. He is a qualifier of militia officers. But, without going into the detail of these duties, I will merely say, that there are a great many things which it is the duty of the justices of the peace to perform; and which, unless left to the legislature to provide, will be found to create much trouble. For instance, they are to demand pedlars licences. I only call the attention of the Convention to these particulars, to show that there are many things which a justice of the peace should perform, besides those enumerated in the amendment of the gentleman from Bernardston.

Now, the amendment of the gentleman for Wilbraham, leaves the matter of what they shall do, to the legislature to settle; it only prescribes that they shall not try causes or issue warrants. That leaves with them the power of acting as conservators of the peace, the same as the constables, which the amendment of the gentleman from Bernardston would take away from them.

Now, Sir, when defining the duties of an officer like this, I am, as a rule, always in favor of taking away the jurisdiction I do not want them to exercise, rather than of defining that I do want them to exercise. I prefer to say, that they shall not do such and such things, and leave the matter of what they shall do an open question, rather than to say they shall only do such and such things. That is precisely the ground upon which the amendment of the gentleman for Wilbraham is based. It excludes them from trying causes and issuing warrants, but leaves them to do whatever else it is proper for them to do. If you un-

dertake to define precisely what the justice of the peace shall do, there will be something left out which we shall find aftewards will be the occasion of much inconvenience. If there had been a single justice of the peace on the ground, in Charlestown, to have given the firemen orders to go on and quell the riot, at the time the convent was burned, they would have quelled it; and there are very many duties which cannot now be foreseen. I am, therefore, in favor of the amendment of the gentleman for Wilbraham, for these reasons. I am also in favor of the first amendment offered by that gentleman, which provides for the election of the justices of the police courts by the people, as well as of trial justices. I am not aware that the jurisdiction of a police justice is of a higher character than that of a justice of the peace; yet, according to the construction which has been given to the present Constitution, there is no way of getting them out of office. Now, I do not know why a justice of the peace who lives in a city, and has the power to try causes, should be a life officer, any more than a justice of the peace who lives in the country, and performs exactly the same duties. I am, therefore, in favor of this amendment, which puts the police justices in the same category with the trial justices, making them elective for the term of three years; giving the same power of removal as in the case of other like officers. I think the people in the cities are just as competent to elect their justices as are the people in the country. I know of some places where they would not get elected, but I also know of some places where they would not be reappointed; but I believe, that in the places where they would not be elected they would not be reappointed. I hope, therefore, that the amendments of the gentleman for Wilbraham will be adopted, and that the proposition of the gentleman from Bernardston, as amended, will then be accepted.

Mr. WESTON, of Duxbury. These resolves come from the Committee of which I am a member; but I regret that it is not in my power to make the explanation which has been called for. Having been absent from the Committee when this subject was acted upon, I am unable to give the reasons which governed them in reporting these resolutions. I, myself, was in favor of the general proposition of electing the justices of the peace by the people. But, as I know the chairman of the Committee feels a great interest in this matter, as do some of the other members of the Committee, who are not now present, for the purpose of giving them an opportunity of defending their own Report, I move that the Committee do now rise, report progress, and ask leave to sit again.

The motion was agreed to—ayes, 70; noes, 37.

The Committee accordingly rose, and the President having resumed the chair of

THE CONVENTION,

The chairman reported progress, and asked that the Committee have leave to sit again.

Mr. HALLETT said he hoped that the Committee would not have leave to sit again, but that they would be discharged from the farther consideration of the subject.

The question being upon granting leave, no quorum voted, when

On motion of Mr. BRIGGS, of Pittsfield, the Convention adjourned until Monday at ten o'clock, A. M.

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MONDAY, July 25, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at ten o'clock, A. M.

Prayer by the Chaplain.

The journal of yesterday was read.

The Convention proceeded to consider the Orders of the Day, the first item being the subject specially assigned for consideration this morning, viz.: the resolves on the subject of

*Amendments to the Constitution.*

The pending question being on the amendment of the gentleman from Pittsfield, (Mr. Briggs,) to the amendment of the gentleman for Wilbraham (Mr. Hallett).

Mr. HALLETT, for Wilbraham. I wish to state, in relation to the proposition that was offered by me the other day, as a substitute for the original Report of the Committee, that there is now pending to it an amendment proposed by the gentleman from Pittsfield, which is in effect to leave to the legislature the regulating of the matter of calling Conventions for the revision of the Constitution. If I understand the intention of the friends of constitutional reform, their desire is that Conventions for the revision of the Constitution may hereafter be held when the people desire it, without the intervention of the legislature. And a proposition has been presented for that purpose, in the form of a substitute for the resolve reported by the Committee. Some exception, however, was taken to that substitute, as embodying too fully the Act of 1852, in which Act, there was something relating to the law as it now exists, which in one of the criticisms of gentlemen, was supposed to throw some doubt upon its construction. I must say, in regard to this objection, that it is rather technical than sub-

stantial; but at the same time, I wish to avoid technical objections of this sort.

Now, the proposition of the gentleman from Pittsfield, is one which all can understand. It proposes to take the question away from the legislature—to depart from the old doctrine that the people shall not reform their government unless in conformity with an act of the existing powers. Now, it appears to me, the question of adhering to such a doctrine as that, is one that will be very readily disposed of by this Convention. I do not apprehend that it can stand for a moment.

Should the present motion be rejected, I shall then desire to propose several amendments to the resolutions, which I now give notice that I will, at the proper time, present to the Convention for its consideration.

Mr. BRIGGS, of Pittsfield. I stated the other day, that I preferred the first proposition reported from the Committee, to the amendment of the gentleman for Wilbraham; and my amendment was intended to restore that proposition, so far as it was affected by the amendment of the gentleman. It only incorporates into his amendment the principle contained in that first resolve. But, if it should be amended in the way proposed by the gentleman, my impression now is, that I would vote against the amended proposition, for the purpose of going back to the Report of the Committee, which I think is preferable.

Mr. SIMMONS, of Hanover. I am unwilling to detain the Convention at this stage of its proceedings, and will not, with any extended remarks; but I cannot suffer the amendment which has been proposed by the gentleman from Pittsfield, to pass, without saying a few words in opposition to it. It appears to me that by its adoption, we should at once become dependent upon the will of the legislature, whether we should ever have a Constitutional Convention or not. And I ask the gentleman what he would propose to do in case one House should see fit to reject any law which the other might adopt in relation to this subject—for unless the two Houses agree, the whole thing falls to the ground; no Convention can be held, and your State Constitution cannot be amended. But, there is another, and in my judgment, a greater evil than that. Gentlemen must be aware that we have adopted a system of representation which it will be found allows a minority of the people to control the elections of representatives in the legislature. We shall, therefore, when this evil has increased, when it shall have grown, perhaps enormous; when from less than a minority it shall have descended until it becomes lodged in the hands of a fourth or a fifth, or even a tenth of the people, we are then to be dependent upon the will of a tenth of the people whether we shall have a Convention—whether the Constitution shall be revised. In other words, one-tenth part of the people of the Commonwealth shall have it in their power to say whether they will give up the power they have—whether they will give up the control of the Commonwealth. Well, now has it ever been known, when any set of men had power in their hands which did not rightfully belong to them, that they willingly gave it up? Go back in the history of the world to the earliest times and trace the course of events down to this hour, and where will you find an instance of a party having power who were willing to yield up that power? The Stuarts might have maintained their ground if they had yielded somewhat; but they would not, and it cost them their heads. So too, the Bourbons, who are said never to have learned, and never to have forgotten anything, always yielded when it was too late, and it cost them their throne. It has been so in our times, and in this country. How has it been in the neighboring State of Rhode Island? A very small minority of the people held out in a struggle of forty years or more, during which, they refused to give up the power, and it brought about something like a revolution—an unsuccessful revolution, I admit—but for that revolution, we had, in a great measure, to thank the good citizens of Massachusetts. It was the arms of Massachusetts, loaned by Massachusetts officers, that were used to put down the majority of the legal voters of Rhode Island. Yet, we see men of the same party, men who stood shoulder to shoulder with each other to put down the majority of the legal voters in Rhode Island, we find them now on the other side. And, I say, reasoning from all this, it is dangerous to leave it in the power of the legislature to say, whether or not we shall have a Convention; it is dangerous to leave it to the legislature to say, what shall be the basis of the Convention to revise the Constitution of the State, when a Convention for that purpose shall be agreed upon. But, it is necessary that we should have some provision that will execute itself. I am willing, therefore, that the proposition submitted by the gentleman for Wilbraham, or the proposition submitted by the gentleman for Marshfield, (Mr. Sumner,) one or both of them, should be adopted. They would cure a part of the evil. They would go as far as this: that a Convention should be held, whether the legislature existing at the time should consent or not. The objection to the proposition of the gentleman from Pitts-

field, (Mr. Briggs,) is, that it leaves to the legislature the power to control the matter. For these reasons, with all due respect for the experience of the gentleman from Pittsfield, I must respectfully protest against its adoption.

But after we have got to that extent,—after we have secured a provision by which a Convention may hereafter be called,—I say this Convention is bound to go one step farther to prevent those who represent but a small minority of the people of the Commonwealth, from controlling the Commonwealth in regard to this matter. If we do not, I will venture to say that our descendants will never see anything like equal representation in their government.

And the way in which I would do this, is by adopting the proposition which I submitted in Committee of the Whole, and which was voted down, for the reason that there was no opportunity given to explain it. And lest there should be no opportunity to submit it again, I will state that it corresponds with the proposition of the gentleman for Wilbraham, with the additional provision that all magistrates, justices, and persons in authority, shall recognize all meetings of the people that shall be holden for the purpose of revising the Constitution; so that we shall not fall into the evil that the people of Rhode Island did from the earliest times. All writers on constitutional law, from the earliest times down to the present hour, the judges of the supreme court, and amongst them Judge Marshall himself, all recognize the right of the people to amend or abolish their fundamental law. It is true the amendment of the gentleman for Wilbraham embodies that doctrine, though not so strongly as I desire. In Rhode Island, as there had been no legislation on the subject, the courts could not take notice of the movements made by the people to amend their Constitution, though it was known that a majority had voted to amend it. Now I want to avoid this; I want to avoid the possibility of the occurrence of such a state of things in this Commonwealth. Let us require our courts to take notice of such action on the part of the people. And if any considerable body of the people can make out to the satisfaction of the court and jury that a majority of the citizens of the Commonwealth had decided that they would have a Convention in a certain manner, let them have it. If we adopt such a provision, in my judgment, this evil would be wholly cured.

There are many other points that I would like to enlarge upon, but the time allowed me is not sufficient for that purpose. There are many subjects that come before the Convention in which I feel a deep and abiding interest, but this is, perhaps, the greatest of them all. I feel that Rhode Island has suffered, and I feel that Massachusetts has done a grievous wrong in this matter, when she should have done what in her lay to farther a sacred principle of liberty. I hope that this Convention will not adjourn until we have done what shall, in some degree, serve to repair that wrong, or at least prevent its occurrence hereafter.

Mr. UPTON, of Boston. I hope the proposition now under consideration will not prevail, but that the Convention will finally adopt the Report of the Committee, which I think is simple and explicit, and covers the whole ground. I object to the proposition of the gentleman for Wilbraham, (Mr. Hallett,) because it undertakes to establish a basis now for future amendments to the Constitution, and instead of establishing it upon the popular branch of the legislature, the Senate, it proposes to establish it upon the House of Representatives, which is not the popular branch but the representative of corporations. I object, therefore, as a matter of principle, in undertaking to establish here a basis for future amendments to the Constitution, as I regard it as an anti-democratic principle to do so. In all the debates upon this floor in relation to the present basis of representation, it has been admitted that the Senate is the popular branch. It has been claimed, and conceded in part, that towns were entitled to a greater representation on account of the concession made that the Senate should be elected upon the basis of population. I object, therefore, to the proposition of the gentleman for Wilbraham, (Mr. Hallett,) because, as I said before, it establishes a basis now for making future amendments to the Constitution, instead of leaving the matter as is proposed by the Report of the Committee, to the legislature. As I understand the gentleman for Wilbraham, (Mr. Hallett,) he submits that proposition as an entire proposition, upon which hereafter to base amendments to the Constitution. By the Report of the Committee, it is provided that amendments may be proposed by the Senate and House of Representatives, and then submitted to the people. It seems to me very important that such a provision should be inserted in the Constitution, in case any clerical errors should be made, or any other errors in the amendments which you should adopt, that would need correction. The proposition of the gentleman for Wilbraham, (Mr. Hallett,) makes no provision for a case of this kind. Under the circumstances I hope, therefore, that the Report of the Committee will be adopted.

Mr. BRADFORD, of Essex. I agree to the principle contained in the amendment of the gentleman for Wilbraham—and I suppose that a

large majority of the Convention will agree to it—that the people alone are the sovereignty, that they are the source of power, and that they have power to alter or amend their Constitution without the intervention of the legislature, or any constitutional authority within or without the State. There are some objections, however, to the plan proposed by the gentleman for Wilbraham; and I desire, if it is in order at this time, or when it shall be in order, to propose an amendment to that proposition. As the proposition now before us is a substitute for the proposition of the Committee, I suppose an amendment to that substitute is now in order. If so, I would offer it at this time. If not, I desire to offer it at some future time.

The PRESIDENT. The amendment of the gentleman from Essex is not in order at this time, as an amendment to an amendment is now pending.

Mr. BUCK, of Lanesboro'. As this is an amendment to an amendment, and as it is not in order to propose a farther amendment, I shall therefore call for a division of the question.

The PRESIDENT. The question will first be taken upon the amendment of the gentleman from Pittsfield, (Mr. Briggs,) to strike out the following words: "in conformity with the provisions of the Act of 1852, chapter 188, relating to calling a Convention of the delegates of the people for the purpose of revising the Constitution."

Mr. HALLETT, for Wilbraham. I presume the yeas and nays were ordered upon this question with the understanding that they were not to be taken upon a proposition to which everybody seems agreed, but upon the other parts of the proposition. I move a reconsideration of the vote, therefore, by which the yeas and nays were ordered.

The question was taken upon Mr. Hallett's motion, and it was decided in the affirmative.

So the vote by which the yeas and nays were ordered, was reconsidered.

The question was then taken, whether the yeas and nays should be ordered upon Mr. Briggs's amendment, and it was decided in the negative.

So the yeas and nays were not ordered.

The question was taken upon Mr. Briggs's amendment, and it was adopted.

The question then recurred on the following amendment, to strike out the words "with the same authority as is provided in the 2d, 3d, and 4th sections of said Act," and to insert in lieu thereof, the following: "to be provided by the legislature to be chosen at said election."

The question was taken, and the amendment was rejected—ayes, 77; noes, 105.

Mr. HALLETT, for Wilbraham, moved to amend the first resolve by striking out, and inserting the following:—

1. A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question: "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall, officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention shall meet accordingly; and thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon, in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

Mr. SIMONDS, of Bedford. I would inquire, Mr. President, if it is in order to offer an amendment at the present time?

The PRESIDENT. It is not.

Mr. SIMONDS. I do not propose, Mr. President, to oppose this amendment; but still, I think it is incomplete; and any other measure proposed for amending the Constitution, I think is incomplete, which does not exclude the ninth article of the amendments of the present Constitution.

Why do we wish for a principle in the Constitution, embracing, as this does, the power of the legislature to unmake any Constitution which the people may establish? I suppose that if a prin-

ciple of this kind is necessary, it is necessary for some beneficial effect; and I would call the attention of the Convention to this inquiry, whether it has any beneficial effect? It is known that it is a new principle, which originated in the Convention of 1820, for the ostensible purpose of amending the Constitution in unimportant and specific matters, which it was supposed might be done by this mode when it would be inconvenient to get a vote of the people for calling a Convention. But I would ask if the experience of thirty-three years has shown that such a power is needed to make unimportant and specific amendments? The legislature has been called upon four times to act upon this matter; and what have been the subjects to which their attention has been called? There have been only three subjects acted upon, which I contend were of the most important and fundamental character of any in the Constitution, to wit: the third article of the Bill of Rights; the basis of the House of Representatives; and the third one, which I consider less important, relating to the time of the meeting of the legislature. These three subjects are all that it has been found necessary to act upon, since the Constitution was adopted, as amended in 1820.

Now, I submit, that in the experience of thirty years, there has been no occasion for the exercise of this power by the legislature, except in those cases which were of the most vital importance. If this is a necessary principle, we might as well say at once that we have done with holding Conventions; and we will have, then, all amendments submitted through that channel. If this principle should not be retained, and the amendment now offered should go in, then, I submit, that it would be better to leave it entirely to this course. I am in favor of the amendment, because I am opposed to retaining this principle in the Constitution; and I shall vote against every proposition which does not provide against the exercise of this legislative mode of submitting amendments in the future. If the legislature are to have this power, and it is thought proper that they should act as they have done heretofore upon the most important subjects contained in the Constitution, this is leaving all the power to the legislature, and saying, at once, that the voice of the people is properly expressed through their agents, the legislature; now, I would go back to the original ground, and declare that the legislature have no right to interfere with the fundamental law which the people have established by the mode of a Convention. One of these two principles must be adhered to, as a fundamental restraint upon the government. I cannot see the propriety of retaining both of these principles, which are, in my opinion, diametrically opposed to each other in their character. When we consider the nature of the subjects which the legislature have heretofore proposed for amendment, in the exercise of that power, we shall find that it has only been used to effect changes in the Constitution which the people had rejected. This result has been effected by reversing the declaration in the Bill of Rights, which says the people alone have the right to alter and amend the form of government, by introducing another power, which changes that, and says the legislature also have a right to propose amendments to the frame of government. And how does this principle operate? The people can never express in any direct form, an opinion how the Constitution should be amended. They must wait until the legislature propose the amendments in form, as they are to be adopted. Now, according to my opinion, the people are the proper power to declare what is necessary for an amendment of our fundamental law. It was on this great principle that our Constitution was formed at first. We have heard it stated in the history of the formation of the Constitution, that the legislature undertook to propose to the people the fundamental law, which the people rejected, and ever afterwards went on and proposed for themselves—until recently—in a legitimate and proper manner, as I believe.

The history of this legislative mode of amendments show, that it has only been used to defeat the will of the people, as previously expressed, on each of the several subjects that have been introduced into the Constitution by that mode of amendment. And the same results may be expected to follow, if that power is retained, judging the future by the past.

It is said this system was adopted by the people in 1820; but it was held out to them that the power of the legislature was only to be used in reference to unimportant matters. This was the argument which was put before them. And now, since the history of the exercise of this power has shown that it has not been exercised in minor matters, but only in reference to important matters, it appears to me that we should now be satisfied that it is not necessary to retain that power, unless we are prepared to show that the legislature is the proper medium through which to express the act of the people.

Mr. CROWNINSHIELD, of Boston. I do not intend to detain the Convention at this late period of the session, to go over again the same matters which I had the honor to present heretofore. I wish to say but a word or two with regard to the objections which I have to this amendment. We all agree that the great mass of the

people have the right to frame their Constitution, and alter it at pleasure. Nobody denies that proposition. I think I see the object of the amendment of the gentleman for Wilbraham to be a proposition to carry out, and forever to fasten upon us, what I must call the unjust principle of representation which has been established by a majority of this Convention. We have decided to submit to the people, for their consideration, a proposition to establish a House of Representatives, not upon the principle of equality, but upon an arbitrary, uncertain, and varying principle, and one that, I must say, I think is unfair and unjust; a principle which will give to a small minority of the people, the control of that body.

Now, Sir, the amendment proposed by the gentleman for Wilbraham, contains this proposition: that whenever it shall be determined upon hereafter to call a Convention of the people, that Convention shall be apportioned upon the basis of representation which may then exist. If the people accept the proposition we have submitted to them, then equality of representation is gone, and any future Convention which may assemble under a call of the people, to alter and frame the fundamental laws of the Commonwealth, will by no means represent the people of the Commonwealth. Sir, it is proposed by the system of representation we have adopted, to put the chain upon us of the large cities and towns. I say the chain, Sir. It is taking away from my constituents their just rights to be equally represented; and the proposition of the gentleman for Wilbraham is to rivet this chain upon us forever. What have we seen here in this body of delegates of the people, in which my constituents are not equally represented with the constituents of many gentlemen on this floor? Here is a Convention of delegates not fully representing the people, and the first thing they do is to go on and propose a basis of representation which is already, under the existing provisions of the Constitution, unequal, vastly more unequal; and we are called upon to adopt a principle for calling a Convention in 1873 upon the same principle of inequality. Where shall we be then, who are now shorn of our just rights? What will become of us then? The next thing, in this progressive age—if this is democratic and republican—will be to have an equal horizontal representation of the corporations, so that some little petty town, in point of numbers—containing three, or four, or five hundred inhabitants—will be as largely represented, and have as many votes, as the city of Boston, which will contain at that time perhaps two hundred and fifty or three hundred thousand inhabitants. And it is just as right and just that they should do so, as to have the unequal representation which we have given them already. These are, in one word, the reasons why I must vote against the amendment.

Upon the question of the expediency of submitting the question to the people every twenty years, whether or not they will have a Convention, I have nothing to say. If it is thought by this Convention expedient to do so, I do not rise to oppose it. But if such a proposition is to be submitted to the people, or any other proposition whereby a Convention is to be called, I will not vote for it unless it contains the great fundamental, essential, eternal principles of a republican government—of justice and equality. If, therefore, the gentleman from Essex, (Mr. Bradford,) has an opportunity to submit his amendment—which, from a somewhat careful attention to it as he read it, I think I understand—I will go for it, because it provides for an equal representation of all *the people* in any future Convention. This is the first time I have known it contended for, that the municipal corporations of this Commonwealth, and acting as corporations, have a right, or should have a right, to make a fundamental law. Against such a proposition as that, I here enter my earnest and solemn protest. When the gentleman from Essex has an opportunity to bring in his amendment—which does provide for an exact and equal representation of the people in any future Convention—I am willing to vote for it, although it may not be in the precise form which I would make it if I had drawn it up to suit myself.

Mr. DENTON, of Chelsea. I did not intend to express any opinion upon the subject now before the Convention; but the remarks of the gentleman who represents Boston (Mr. Crowninshield) have induced me, in a few words, to reply to the argument he has used with regard to the representation of Boston on this floor. I, Sir, represent a portion of Suffolk County. I take issue with that gentleman on the question of the representation of Boston and the other towns in Suffolk County. Comparing the population of Boston with the population of Chelsea, we find that Boston is more fully represented than Chelsea. Chelsea has a population of near nine thousand, and Boston has some one hundred and thirty-five thousand. Boston is represented on the floor of this Convention by forty-four representatives, and Chelsea has but two. Now, I ask the gentleman from Boston, if Boston is not more fully represented than the town of Chelsea? He, I am sure, will not deny this fact. Not only have they more delegates upon this floor, in proportion to their population, than the town I have the honor to represent; but also by the

election of those delegates on a general ticket, each and every voter in the city of Boston was entitled to vote for forty-four delegates to this Convention, while the voters of the town of Chelsea, in their representation upon this floor, were only entitled to vote for two. Sir, does this look as if Boston was unequally represented? I think not. Now, Mr. President, these are facts, and no will deny it. Consequently, I say, that Boston is equally, and more than equally represented, and will be, as long as the general ticket system prevails.

And now, Sir, one word in regard to the subject before the Convention—a subject, in my opinion, one of the most important that will be submitted to the people—the rights of the people themselves, whether the people, through their qualified voters, independent of all legislative enactments, shall have the power to call a future Convention, or whether they will delegate that power to future legislatures. That is the question. And, I believe, if the proposition of the gentleman for Wilbraham (Mr. Hallett) should be accepted, it would be precisely what the people want. It gives them the right, without any legislative interference, to hold their future Conventions. Now, Sir, why not submit this proposition to the people? It is a proposition for them to act upon—a question which is of vital interest to every man, woman and child, in the whole Commonwealth, and one which if they adopt, must be by a majority of legal votes cast in the whole Commonwealth, and not by a majority of the towns, or a majority of the representatives of the towns. It is for the people themselves to decide, if this proposition is submitted to them, whether they will accept or reject it. If the people say aye, it will be incorporated into the Constitution, and become a part of the fundamental law of the State. And now, Sir, what would be the effect of this law, provided it should be adopted? It is that the people, in their primary capacity, through their qualified voters, may decide in 1873 whether they will have a Convention for the purpose of revising the Constitution. Then, again, it will require a majority of all the votes cast in the State to call a Convention; and if a majority should decide that the Constitution ought to be revised or amended, why the delegates elected would meet, according to the provision in the Constitution, and transact their business without any of the formula that would be attached if the authority of the legislature was required before the people could themselves act upon the question. This, of itself, is a sufficient reason, in my opinion, why the proposition of the gentleman for Wilbraham should be adopted. It has been objected, by gentlemen opposed to the adoption of these resolutions, that any specified time should be appointed for the holding of future Conventions, that it is taking what properly belongs to the legislature; that they should present the question for the legal voters to decide; and that this Convention is usurping a power that does not properly belong to them, to decide what action may be necessary for the future. Why, Sir, the gentleman, in his resolutions, provides that the legislatures may, by concurrent action, present the question of calling a Convention to the people, whenever, in their opinion, it may be expedient; and if the people, by a majority of legal votes, decide in favor, then the Convention will be held accordingly. Thus it will be seen, that whatever emergency may arise, the legislature, if necessary, may submit the question for the final action of the people; while, at the same time, there will be incorporated a provision that, at the expiration of twenty years, without regard to the will of any legislature, and beyond the control of any legislative action thereon, the people themselves, independent of any and all other power, will, by their own votes, determine whether there is a necessity for revising or amending the Constitution.

Then the question is, how shall the people be represented? I can see no other way in accordance with the principles of justice, that they can be represented in that Convention, except by a representation from the several towns; because we have incorporated into the Constitution that every town shall be represented according to the number of inhabitants; and if the inhabitants or legal voters in those several towns say that they wish them to be represented, why, in the name of common sense, should not every town be represented in forming our fundamental laws for the future? Is it not the principle of justice that every town shall be represented in that Convention? I ask if we should disfranchise any individual town from being represented where the fundamental law of the Commonwealth is to be submitted to the whole people? This matter seems to be a very important matter, and at the same time it appears to be a very simple matter. It appears to me that gentlemen have brought in and thrown a mystification around it, which plain, common sense men can see at once is for a specific object. The question, as it seems to me, is simply this: Shall the people, in their primary capacity, have the right, in 1873, without any legislative action on the subject, to assemble through their delegates in a Constitutional Convention? That is the whole matter at issue; and now, all we want to decide is, how shall they be represented? It seems to me to be no more than strict equality

and justice that every town in the Commonwealth, whether it contains one thousand inhabitants, or one hundred and fifty thousand, shall be represented in the Convention to form the organic law. I should not have said anything upon this subject, had it not been that a false impression might go before the Convention that the city of Boston has not an equal representation with the other cities and towns in this Commonwealth, while she has forty-four representatives who are sent here by general ticket, which gives her more power than those towns possess which send one, two, or three representatives, according to their population.

Mr. CROWNINSHIELD. I wish to say one word in relation to the remark which has been made by the gentleman from Chelsea, that she has not an equal representation with Boston, in proportion to her population. That is no answer to what I said. I maintain that the city of Boston has not her full share of representation upon this floor. By the last census, there were one hundred and thirty thousand inhabitants in this city, and she is only entitled to forty-four representatives out of more than four hundred, being but little more than one-tenth, while she has a great deal more than one-tenth of the population of the Commonwealth. It follows, of course, that she has not a full representation.

Mr. HATHAWAY, of Freetown. I concur with the gentlemen who have preceded me, in reference to the inalienable rights of individuals to take part and lot in the government of the State under which they may live, whether it be in this or any other State. I maintain that in Rhode Island or here, there should be a representation, equal as is practicable, of the people. I agree, also, with gentlemen who say that our representation in the House of Representatives is not to be an equal representation of the people; and if this is so, then that the difficulty and "rebellion," (as some characterize it,) in Rhode Island, grew out of the same unjust principle that is incorporated in the proposition which you are about to present to the people as the basis of the House of Representatives in this State. It is a representation of towns, and not an equal, but an unequal representation of the people. Was not that the real difficulty in the Rhode Island case? And is not the same principle of injustice and inequality involved in the proposition of the gentleman for Wilbraham for future Conventions, as the delegates are to be chosen by and to represent towns, instead of the people; and how does his amendment relieve us from that difficulty? His proposition may not be so excessive and barefaced in its unjust operation, as the Rhode Island question was in Rhode Island; but you may multiply and change the forms as much as you please in reference to the Rhode Island matter, and this matter, and after all, this proposition and the Rhode Island difficulty, both settle down upon the unjust principle that man is not equal with man, but that his political weight in government depends on the accident of his "locality." That his mere locality should make him unequal with his fellow-man of another place, both in the formation of an organic law, and in the enactment of ordinary statutes. Was not this unjust principle the cause from whence arose all the tribulation, and trouble, and persecution that they experienced in Rhode Island? Now, Sir, I maintain that the very difficulty and injustice which was involved in the Rhode Island proposition, is involved in these propositions which have been presented, and also in the amendment of the gentleman for Wilbraham, because the representation in our future Conventions is to be by a delegation from the towns, who are to represent the towns, and not the people. You may shift and change the language of the propositions now under discussion as much as you please, but in all their varied forms and colors, there is still the same injustice involved in them which was involved in the Rhode Island matter. The same spots on the leopard still remain; and the color of the Ethiopian's skin, which cannot be changed. There was not an equal representation of man with man in that State; and there is the same trouble here. I speak with great diffidence in relation to this matter, because gentlemen say that my warmth on this subject carried me away the other day, and it may carry me away again. If that should be the case, I hope gentlemen will do me the justice to believe that I mean no offence, as I meant none then. I intend to discuss every question coolly and deliberately in every discussion in which I shall take a part; and I cannot refrain from saying that I used no improper language on that occasion, and none has been, or can be, pointed out. Here, then, is the same great principle involved in this question, which was involved in the Rhode Island question. At the time of the Rhode Island difficulty, I was in part a Rhode Island man. Upon that occasion, I was stigmatized as being a "Dorrite," but the principle which I acted upon then, I am yet willing to stand up to and defend, here or elsewhere, whenever it shall be necessary.

Sir, let us for a moment analyze the proposition before the Convention, which has been reported by the Select Committee. It is, that in 1873, you shall have a Convention, and that you may have one at such "*other times*" as the legislature shall direct. Not that your legislature

shall have the power hereafter to say that you may or may not have a Convention, in 1873; but it is positively provided, by the proposition of the Committee, that in 1873, those who have the right of suffrage in this Commonwealth—the voters—*shall pass upon this question, whether there shall then be a Convention or not.* As to the holding of *other Conventions*, in "other times," the legislature are to pass upon it. Now, as to the Convention to be held in 1873, I do not perceive any difference between the gentleman's proposition, when you analyze it, and the proposition of the Select Committee. I would not refer to the law of 1852, and make that part and parcel—as the gentleman for Wilbraham proposes to do—of your Constitution, for it is merely a statute law. There are great objections, in my mind, to so doing; and as I am informed—for I was not present—the impropriety of incorporating that Act in, and making it a part of, the constitutional law, was ably and clearly stated, the other day, by the gentleman from Cambridge, (Mr. Parker,) and the gentleman from Salem, (Mr. Lord,) that I will not remark any farther upon it, except so far as one provision is concerned. As I understand the new proposition of the gentleman for Wilbraham, and which he has just now introduced as a farther amendment to his proposed amendment, he now excludes from it the second section of the law of 1852, for the calling of this Convention; but if that is not to be excluded, but to be included, as he first proposed in his amendment, I should like to have him tell me, if he can, whether that section of the Act is so plain that "he that runs may read, and understand it." Is he certain that he understands it? and can he tell me whether those towns that shall be incorporated from 1870 to 1873—if any shall be incorporated—will be entitled to send delegates to the Convention then to be held? I confess, Sir, that in referring to that section of the Act, I cannot tell, for the life of me, whether those towns which have been incorporated since 1850, if they had sent delegates to this body, would or would not have been permitted to be represented, and whether such delegates would have been entitled to seats in this Convention. I presume the members of the Convention will recollect the debate which came up in reference to the admission of the gentleman from Walpole, to a seat here, because a portion of the town of Dedham had been taken off and annexed to Walpole. The question there arose on account of the annexation of a small portion of the territory, and a few inhabitants of Dedham, to Walpole. Suppose that West Roxbury, or any other town that has been incorporated since 1850, had sent a delegate here, under the statute of 1852, I want the gentleman for Wilbraham to tell me whether it is perfectly clear, from that law, that such delegate would have, and ought to have been accepted, and admitted to a seat upon this floor? But I understand that this portion of the law is excluded from the gentleman's amendment to his amendment, and therefore I will not pursue that branch of the subject. Permit me, however, to say that the law of 1852 was very imperfectly drawn; that it was almost an exact transcript of the law calling the Convention in 1820; and in consequence of the changes in the Constitution as to representation, and made since 1820, that law was not perfectly applicable to our present condition and wants.

In reference to the remark that fell from the gentleman from Chelsea, in his reply to the gentleman from Boston, (Mr. Crowninshield,) that there will be a disfranchisement of some of the towns, so that they will not have their full share of delegates in the Convention of 1873, let me say that, if the town basis which you have agreed upon shall be adopted by the people, there need be but little fear that any of the towns will be disfranchised, or that the small towns will not then have their full share and weight in the formation of the Constitution. The true question is, will will you not then virtually *disfranchise the electors and voters?* Will you not disfranchise men by your proposed inequality of representation in that Convention? The proposition of the gentleman from Essex, (Mr. Bradford,) disfranchises nobody. Every-body who has the right of suffrage, whether he lives in a small town in the country, or in the city, has an equal right, one with another. It is in consequence of these and other difficulties that have presented themselves to my mind, and because I believe that there should be an equal representation upon this floor, of man with man, instead of a representation by corporations, that I am in favor of the proposition of the gentleman from Essex.

Another reason is, that I would not, as has been the case in this Commonwealth, make one man's political power forty-four times greater than that of another, who happened to reside in different locality—no, nor even double. But, by your present proposition, you give a certain amount of political power to an elector in certain districts and towns in the Commonwealth; and a different amount, less or more, to another elector, in other districts and towns. I use the word districts because, in my judgment, it was intended by our fathers, when they framed the Constitution, that these towns should be districts, for the purpose of choosing representatives, as the sev-

eral counties were to be, and have been, districts for the choice of senators. In one case, a man can vote for several representatives, and in another case he can only vote for one; and it is just so in choosing your delegates for a Convention; in some towns each elector may vote for three, in others only for one. Is that in accordance with the genius and spirit of our government? How is it in regard to the executive department of government? No matter whether I reside in Boston, or in Erving—in Lowell, or in Hull—when I come to vote for the chief executive officer of the government, my vote counts one, and just as much, no more or less, than that of any other elector. No matter what the locality, the representation and political power of every elector is alike, and equal. The same principle is about to be applied to one branch of your legislature—the Senate. No matter where a man may be located in the Commonwealth, he votes, man for man, and has an equal right—if he is an elector—with every other elector in the Commonwealth. Now, why should you, in choosing representatives to the legislature, or delegates to a Convention, to frame an organic law, still retain a principle which gives a man in one locality, three times the political power which he has in another? The proposition of the gentleman from Essex makes one man equal with another, no matter where he is. It does not do as they did in Rhode Island—give a man who lived in one town great political power, and a man who lived in another, very little, if any at all; and I think that is a good reason why we should adopt the proposition of the gentleman from Essex. The original Report and resolutions of the Committee, it seems to me, stand well enough, provided the principle of the amendment of the gentleman from Essex shall be incorporated into it, and made part of the resolutions, so as to give five, eight, or ten—I do not care what number, provided the Convention in 1873 is not too large—delegates from each senatorial district. Then the representation will be perfectly equal; and there will be no disfranchisement, directly or indirectly, of any man or elector in the Commonwealth. The gentleman from Chelsea talks about the disfranchisement of towns, but let me say that what he terms the disfranchisement of towns, is, to a certain extent, involved in every proposition which we have had before us—except the district system—because all of those towns which contain less than a thousand inhabitants are to be disfranchised five years out of ten. They are, if need be, to be taxed every year, but are not to be represented, upon an average, only every other year; and taxation without representation, or a right to it, when taxed, the friends of town representation call disfranchisement. But the proposition of the gentleman from Essex accomplishes all that can be accomplished; that is, that not a single voter shall be disfranchised upon the occasion of calling a future Convention. Each one and all of the electors are to have equal political power, without regard to towns, cities, or place. Hence, his proposition is more consistent with the principles of a free and equal government than the other, and therefore I go for it.

Mr. ALLEN, of Worcester. I rise to make a proposition, and not to discuss this question. We all agree that the people of this Commonwealth should be at liberty to call a Convention whenever they see fit; but it seems to me that the idea that the people will want a Convention again in 1873, or at any other fixed period of time whatever, is one that we can hardly entertain. The people will want a Convention whenever the condition of public affairs and of public sentiment shall require it; and whether that shall be done at one time or at another time, is something that no person is competent to predict. The people may want a Convention fifteen years from now, and they may have it, and make all the necessary revision of their Constitution at that time; and shall they have another in five years afterwards? Or twenty years hence they may desire a Convention, and five years afterwards a state of things may arise which will render it desirable. Who supposed five years ago that a Convention would have been wanted now; but in 1852 or 1853 it was thought very desirable that one should be called.

The proposition, as it came from the Committee, has been much modified, and gentlemen in all parts of the House intimate a purpose to modify it still farther. Numbers of gentlemen who have not spoken upon this question, have each, I believe, their separate propositions to offer. In this state of feeling on the part of the Convention, and believing that the subject is not very well digested—believing, also, that it lies before us in a very crude state—I am about to move that it be recommitted to a Special Committee; and in order that no time may be lost, I move that that Committee report some digested plan to-morrow morning, by which the people, twenty years hence, may have a Convention, or whenever else they please.

The motion to recommit was agreed to.

Mr. ALLEN. I beg to say, that having moved this question of reference to a special committee, I desire that I may not be appointed as one of that committee, having other engagements.

Mr. MORTON, of Taunton. I would suggest

to the gentleman from Worcester, that the number of gentlemen of which the committee is to consist, should be fixed.

Mr. ALLEN. I believe that that has usually been left to the discretion of the Chair; but in order to make the matter more definite, I move that the committee consist of seven.

The PRESIDENT, after deliberation, named the following gentlemen as the Committee:—Mr. Hallett, for Wilbraham; Mr. Crowninshield, of Boston; Mr. Nayson, of Amesbury; Mr. Sumner, for Marshfield; Mr. Williams, of Taunton; Mr. Alvord, for Montague; and Mr. Simmons, of Hanover.

Mr. CROWNINSHIELD. I ask to be excused from serving, as it will be exceedingly inconvenient for me to attend to the business of this Committee.

Excused.

The PRESIDENT. The Chair, then, will name Mr. Hillard, of Boston.

Mr. HILLARD. I am in expectation of being summoned into court as a witness, and therefore I beg to be excused.

The PRESIDENT. Then the Chair will nominate Mr. Briggs, of Pittsfield.

Mr. BRIGGS. I am upon two other committees, one of them a very important committee, which meets this evening. It will hardly be possible for me to attend to this business, and I ask to be excused for that reason.

Mr. Briggs was excused.

The PRESIDENT. The Chair will name Mr. Lord, of Salem.

Mr. LORD. I was about to say that I am upon a committee which is to meet this evening—the Committee on Revision; and I beg to say that I cannot be in two places at once. If I attend to the business of this Committee, I shall be obliged to neglect that of the other. I think I would prefer to be excused.

Not excused.

Mr. DENTON, of Chelsea. I move a reconsideration of the vote by which this subject was recommitted.

The motion to reconsider was rejected.

The Special Committee finally stood as follows: Messrs. Hallett, for Wilbraham; Sumner, for Marshfield; Williams, of Taunton; Alvord, for Montague; Simmons, of Hanover; Lord, of Salem; and Hazewell, of Concord.

*Orders of the Day.*

On motion of Mr. WESTON, of Duxbury, the Convention proceeded to the consideration of the Orders of the Day, the first question therein being the question of granting leave to the Committee of the Whole to sit again for the consideration of the resolves on the subject of justices of the peace.

The question being taken, leave was granted.

The resolve granting authority to the Committee on Reporting and Printing, and also the resolve on the subject of the Commissions of the Judges were passed over—these resolves being in the hands of the printers.

*The Council.*

Mr. HALLETT. I do not intend to detain the Convention by saying a single word upon this subject, but it has been suggested to me from many quarters of the House, that there has never been a fair expression of opinion on the subject of the final passage of the resolves in regard to the Council. I have no feeling myself on the subject, but I move a reconsideration of the vote so that the question may be taken by the yeas and nays.

The motion to reconsider was rejected.

*Banking.*

The Convention next proceeded to the consideration of the resolves on the subject of Banking, the question being on their final passage.

Mr. HALL, of Haverhill. I desire to say a few words upon this question, though I very much doubt whether I can compress what I have to say, within the time allowed, under the fifteen minutes' rule. I may not have time, under that rule, to say all that I could wish, but I desire to notice one or two points in regard to this question, which it seems to me, have not been noticed by other gentlemen who have spoken upon the subject. The Convention may not be willing to hear debate upon this subject, but it appears to me to be one of those questions upon which the Convention ought not to pass too hastily. I believe this question to be of too much importance to the people, to be passed upon hastily, and put into the Constitution even by gentlemen who intend that this Constitution shall be ratified by the people.

Now, Sir, I am in favor, as I always have been, of a limited amount of banking capital. I am in favor of that amount of banking capital which the people of the Commonwealth desire in the pursuit of a legitimate business in the community, and as far as that capital is seeking a *bona fide* investment. It would seem, that some fifteen years ago, the great bulk of the banking capital was owned by the Whigs. At that time I had about made up my mind, from what certain presses and certain men said, that such was the fact; but, as I became acquainted with men

and with business, I found that I was mistaken. Sir, this question of banking is not, and never has been, a party question in this Commonwealth. There are Democrats interested in banking capital, and Free Soilers also; and there always have been, although some people may think that it is a mistake. As we find, upon examination, there are gentlemen who own large amounts of banking capital in this Commonwealth, who are Democrats—gentlemen who are in the management of banks who are Free Soilers and Democrats, so that it is not exactly a party question after all. My friend and colleague from Haverhill, a Free Soiler, every inch of him, (Mr. Hewes,) is president of one of these banks, as respectable a bank as there is in the community. Gentlemen will, therefore, understand, that it is not exactly a party question in the Convention.

I desire to notice two particular points on this question, first as to the security to the bill-holder——

Mr. STETSON, of Braintree. If the gentleman will allow me to interrupt him, I would like to ask him one question.

Mr. HALL. The gentleman from Braintree is aware of the existence of the fifteen minutes' rule, and that, with interruption, a gentleman can hardly be expected fully to express his thoughts in that time, upon an important subject like this.

Mr. STETSON. The gentleman was proceeding to state what parties represented the banking interest. I should like to know how many Whigs and how many Democrats are connected with the bank of which the gentleman from Haverhill is cashier?

Mr. HALL. I suppose I could answer the gentleman, if he is particularly anxious to know from me; but I suppose he knows already, without my informing him. I might ask the director (Mr. Stetson) of the Shoe and Leather Dealers' Bank, [laughter,] how his corporation was divided in this respect. I spoke of the matter as a general question, and said that some years ago it would seem as though all the banks were owned by one party in the Commonwealth. I say that that is not so; and my friend, who is a director in the Shoe and Leather Corporation, understands that perfectly well.

I was proceeding to say, when interrupted, that there were two points on which I desired to speak—one of them a point that my friend from Charlestown labored hard upon—first the security to the bill-holder, and secondly, the practicability or impracticability of a general banking law. I understood the chairman of the Committee to which this subject was referred, to say, that we had no law sufficient to secure the bill-holder. Now I desire to call attention to that point for a moment; and, if I am not mistaken, there are some gentlemen present who will find that there is a great deal more law upon that subject already, than they seem to be aware of. I therefore ask attention to four or five short extracts from these laws, which go to secure the bill-holder. The first extract to which I shall refer, regards the "loss of capital."

"If any loss or deficiency of the capital stock shall arise from the mismanagement of the directors, the stockholders at the time of such mismanagement, shall, in their individual capacities, be liable to pay the same. No one shall be liable to pay a sum exceeding the amount of stock held by him."

This was passed in 1828, and, under this section, gentlemen will see, that when a bank fails, the stockholders are not only liable to the loss of their capital stock, but to a given amount besides. If a man owns ten shares of bank stock, and the bank fails, he is liable for ten shares more.

Another section says:—

"The holders of stock in any bank at the time when its charter shall expire, shall be liable, in their individual or corporate capacities, for the payment or redemption of all bills issued by such bank, in proportion to the stock they may respectively hold at such dissolution."

In that section, gentlemen will see that the stockholders of a bank on winding up its charter, are liable in their individual capacity, *pro rata*, for every bill in circulation. And under this section they are liable for the recovery of damages:—

"Any stockholder of a bank, who shall have been obliged to pay a debt or demand against such bank, may have a bill in equity to recover the proportional parts of such sums as he may have so paid, from the other stockholders."

A bill-holder, therefore, it will be seen, may sue any one stockholder, and, if he does not obtain satisfaction from him, may sue any other one.

Now here is another section as to the liability of stockholders:—

"Any corporation which is, or shall be a stockholder in any bank, shall be liable, in its corporate capacity, to pay any loss or deficiency of the stock of such bank, arising from the official mismanagement of its directors; and also liable for the payment or redemption of all bills issued by such bank, and which bills shall remain unpaid when its charter shall expire, in the same manner as individual stockholders are liable in their individual capacities."

We have the decision of the supreme court to

this effect. Now how is it with these corporations? One gentleman said, the other day, that a large amount of this bank capital was owned by women and children. That is true in some senses. If he terms two and a half millions a large sum, it is true. More than one-third of the bank capital of the Commonwealth is owned by savings banks, and other corporate institutions—precisely *the class* of owners that the bill-holders on a broken bank would desire. I contend, therefore, that in regard to all these points there is law enough. But there is still another law which was passed in 1849, in regard to the individual liability of stockholders. Here is the provision:—

"The holders of stock in any bank, at the time of its failure, shall be individually liable for all bills of such bank, issued and unpaid, in proportion to the stock they may respectively hold."

This is the same provision that was passed in 1828, only a little stronger.

Now it may be said that the stockholders may know something about the condition of a bank, and in anticipation of a failure, may transfer their stock. But we have also a section in regard to this point:—

"If any shareholder, having reasonable belief that such bank is about to fail, shall transfer his shares to avoid individual liability, such transfer shall be void as respects such liability."

But that did not go quite far enough, and there is still another law. It is this:—

"If any stockholder in any bank, having reasonable cause to believe the bank insolvent, shall within six months before the expiration of its charter, transfer the whole or part of his shares, with intent to avoid his liability for the redemption of its unpaid circulation, such transfer shall be void, so far as respects such liability."

Now, Mr. President, it appears to me that we have laws enough upon this subject, and decisions affirming the validity of these various laws, by the supreme court of this Commonwealth, and it appears to me that the bill-holder is not in a condition to lose anything.

Now, Sir, the gentleman from Charlestown, (Mr. Frothingham,) read from the Commissioners' Report, and I, also, desire to read one or two sections from the same, because that report contains some very good reading. In the report of 1850, from which the gentleman read, the commissioners, after examining the New York banking system say:—

"That system, however, has been sustained only by continual resorts to the legislature, to modify the laws which regulate it, and it is already apprehended that a deficiency will soon exist, in the requisite amount of public stocks for its basis.

"The system of banking on the security of public stocks, will soon, *we trust*, be impracticable in all the States."

This report is signed by Solomon Lincoln, Joseph S. Cabot, and George S. Boutwell.

Also, after referring to the system of banking in other countries, these commissioners say:—

"One principle, however, seems to be well settled, that a mixed currency, composed partly of gold and silver, and partly of paper, redeemable in specie, on demand, is the most economical, the most convenient, and the most useful, of any yet devised."

I have no doubt that this will be considered as good authority upon this subject.

What farther do the commissioners say, in another report, after having examined the banks for two years? They say:—

"And first, we remark, that the currency of the Commonwealth, so far as it depends upon its banking institutions, is in a sound and healthy condition. The banks are, in the main, carrying out the objects for which they were created, with fidelity to the public and to stockholders. In most essential particulars, they do, with few exceptions, conform to the requirements of the various statutes passed for their regulation. Their practical operation has been such, as to be conducive to the various important interests of the community; and they have generally been managed with so much intelligence and sound judgment, as to render their stock desirable for investment, by a large number of our inhabitants, who, from their position, are obliged to intrust their property, to some extent, to the control of others, for the purpose of procuring from it the income necessary for their support."

Now, Sir, if these banks are working to carry out the purposes for which they were created—and this board of commissioners, composed of men of different parties, say they are—if they are working with fidelity for the public good, it appears to me that we need not change that system of banking, at the present time. After examining, for two years, every bank in the Commonwealth, the commissioners say, in winding up:—

"We have desired to exhibit, so far as in our power, the actual condition of the banks, and their influence 'in providing a currency best adapted to the wants and interests of the people.' We propose no legislation which shall be vital to the system, believing that its continuance is preferable to a change. If we were called upon to frame a new system, some alterations of existing provisions of law might seem desirable, other than

those mentioned by us; yet, as many of our existing statutes have been the subjects of judicial interpretation and decision, and have thus been made, to a great extent, certain in their application, we do not feel inclined to recommend essential changes which would unsettle the law, and raise new questions for litigation."

This is the testimony of bank commissioners, composed, as you know, of gentlemen of opposite political sentiments, after a thorough examination of all the banks in the Commonwealth, for a period of two years.

We have, also, the opinion of the bank commissioners of 1853, which is as follows:—

"The officers having the immediate charge of the institutions were, with the exception of a single individual, sworn or affirmed to the truth of their statements, as authorized by the statute; and the commissioners take pleasure in stating, that the officers of banks generally have rendered every desirable aid to facilitate the investigations, which have been as thorough and satisfactory as the nature of the case seemed to require.

"The results of the examinations of the year, embracing institutions in almost every section of the Commonwealth, indicate, with an approximation to accuracy, the general condition of the banks of Massachusetts. The 'general conduct and condition' of the banks examined have been, with some qualifications, satisfactory to the commissioners, profitable to stockholders, and useful to the community."

This report is signed by Solomon Lincoln, Peter T. Homer, and Samuel Philips.

Now, Sir, this does not look as though our banking system was in a very dangerous condition, even for the bill-holders.

Some gentlemen predict a reversion in business, and a probable suspension of specie payments by the banks. Well, Sir, I see no good reason for this prediction, at present; my opinion is this: that, as we produce, as a nation, very much more, in proportion, than our indebtedness accumulates, and, probably, shall continue to do so, we need have no fears of a national crisis, such as was experienced in 1837 and 1838, but that in the fact I have named, is our safety. And, as we have a permanent board of bank commissioners, constantly watching the banks, and the Suffolk Bank system, requiring every bank to redeem its bills daily, thereby obliging them to keep at all times prepared to meet their liabilities, together with the personal liability of the stockholders, as I have shown, it appears to me, that there is no danger whatever to be apprehended, so far as our circulation is concerned.

The circulation of bank bills is never what it appears to be by the returns of the banks. These returns are made up at the close of business hours on given days; and when the books of a bank shows its circulation to be $100,000, the Suffolk, or some other bank, has redeemed, and has in its vault, $25,000, more or less, entirely out of the hands of the public; and this is probably true of nearly all the banks in the State, which would reduce the actual circulation at least twenty-five per cent.

Entertaining this opinion, and these views, I am opposed to changing the system of banking in this Commonwealth, acknowledged, by everybody, to be the best in the world.

[Here the President's hammer fell, the fifteen minutes allowed by the rule to each member to speak, having expired.]

Mr. KEYES, for Abington. I believe that this question has been pretty well discussed while I have been absent, and probably what I am about to say, may have been said already. But it seems to me this is very much like shutting the door after the horse has run away. I think the gentleman who last addressed the Convention, spoke very sincerely, and I was rather surprised to hear him, and the gentleman from Haverhill, bank men both of them, take the grounds they did. It strikes me it is for the interest of the banks themselves, which are now incorporated, to maintain this provision, because it would secure to them, what I understand the gentleman from Boston said yesterday, a monopoly of banking. What is to be the result of this? The world is not coming to an end yet, or as I once heard it said, by the gentleman from Oxford, the bottom is not going to drop out. Things are to go on in the future, as they have in the past. If an increase of bank capital has been needed for the last twenty years, it will be needed for the next twenty years to come. Now the question is, shall the men who hold the fifty-four millions of bank capital now incorporated, have a monopoly of the business of banking? No, Sir. It has been settled that the present general banking law contains such provisions as will prevent persons taking advantage of it while the special charters exist. The general banking law is good for nothing, practically, alongside of special charters. It was only five years ago that a large portion of the banks came forward, when their charters expired, and had them renewed. Then we passed the Rubicon. The gate should have been shut down at that time, and a provision should have been made then, under which all the banks should have been compelled to come, as they were in New York, under the provisions of the general banking system. The bank system of New York State is the finest in the world, and nobody that looks into it, but will come to that conclusion.

But it is stated that the system is impracticable, because stocks enough cannot be obtained as a basis to carry it on. The people of Massachusetts will have additional banks from time to time, as long as this system is in existence, and they will not be quiet and let the present banks have a monopoly of the present system.

Well, Sir, what will be the result? They will come to the legislature and say, if we must have a general banking law, you must give us a general law that will permit us to bank with as much profit as those specially chartered. They will ask for such a law, and they will get it too; and then what will be the consequence? Why, all the private individuals in the Commonwealth, who choose, can go to banking with just the same privileges as these banks with special charters; and the evil, if it be an evil, which now arises from the banks of the Commonwealth being too numerous, will be increased ten fold. If you could do away with the charters of the banks already now in existence, that would place the matter in a different light; but here you have $54,000,000 of bank capital already in existence, under special charters, which are to exist upon an average for fifteen or sixteen years. About four or five years ago, a very large proportion of the old banks renewed their charters for twenty years. This last year nearly $10,000,000 more of bank capital was chartered for twenty years. This brings the average length of the charters from this time to an average of fifteen or sixteen years; and if you abolish this system of granting special charters, and authorize no banks to be chartered except under the general banking law now in existence, these banks, with their special charters, will have the whole monopoly of the banking business of the State for fifteen or sixteen years. I tell gentlemen that the people will not stand it.

As I remarked, the matter of doing away this old system now, is a very different one from commencing anew. If we were just now commencing a banking system for the State, I might be in favor of this resolution, and vote for a general banking law.

Sir, the gentleman from Oxford has alluded to this State tax upon banks. That gentleman has alluded to the same subject in the same way, several times before, in my presence, in legislative bodies. Now, Sir, it strikes me that this is the most just of all the taxes imposed by the legislature upon the people of Massachusetts. I know of no other instance where, in proportion to the advantage derived, the tax is so small as this. Why not? You give me the privilege of issuing my rags to the amount of $200,000, upon which I can get an interest of six per cent., and I should be most happy to pay the tax of one per cent. After paying this one per cent. tax, the compensation is more than sufficient to pay me for all the capital I have invested. If men can borrow $20,000 for a few hours, that is all they want. They can then commence their issues, and scatter them over every State in the Union, although it may be, as has been remarked, that they are secured mainly by the notes of hand of the stockholders. In this way the banks are allowed to circulate much more money than they have capital invested, and, after paying the one per cent. what compensation do they receive? Gentlemen very well know that nearly all the banks in the State are constantly declaring four per cent. semi-annual dividends, or eight per cent. yearly dividends; and therefore, I say, that the advantage derived from their charters, is much greater than the burden imposed upon them in the shape of a tax. If you could check their farther increase altogether, that would be one step towards accomplishing the result you are seeking. But you cannot do it, and it seems to me that one per cent. is not enough for the extraordinary privileges you confer upon them. The system under which we live, has now gone too far to make it in your power to check it without increasing the evil; and, therefore, for anything I can see, you will have to allow the evil—if it be an evil—to go on until it remedies itself. Because I believe if we undertake to check the farther increase of banks, the people will never submit to have these six hundred individuals, of which the gentleman from Oxford (Mr. De Witt) speaks, who own the present bank property, to monopolize the whole banking business of the State for the next fifteen or sixteen years.

Sir, this system of banking that is carried on, although to a certain extent it increases the wealth of the State, and to that extent the industry of all the people in the State, yet is a system which results in gross inequality. It is a system by which a man with $20,000 capital, by means of trading upon the capital which belongs to somebody else, to California or Australia, receives the profits of $500,000, without incurring the risk of but one twenty-fifth part of that sum. I say, therefore, it creates a most extraordinary inequality among people who do business; but yet I do not complain of the system on that account, because the business, the wealth, and even the extravagance of the people to a certain extent, is an advantage to all, even to the poorer classes of the community.

But, Sir, I believe the passage of these resolutions will lead to greater mischief than the present order of things—if it be true that the present order of things does lead to mischief. If it

is dangerous to increase the capital of these banks, it will be increased to a greater extent than under the present system; because, according to my view of the matter, it will be exceedingly unjust to allow the banks now in existence to hold a monopoly of all the banking business of the State for the next fifteen or twenty years; and if they do not hold that monopoly, then there must be general banking laws passed, giving privileges in every way equal to those enjoyed by the banks having special charters, so that every-body who chooses can go into the business of banking. I see, therefore, no way of escape from what gentlemen term the evil of the present system, except to allow it to go on until there shall be so many banks established that the business will cease to be profitable, and then the evil will check itself. I hope, therefore, that the resolves will not be adopted.

[Cries of "Question!" "Question!"]

Mr. HOOPER, of Fall River. I move to amend by adding to the second resolution the following:—

*Provided*, That no note or bill of a less denomination than ten dollars, shall be issued as currency, after the year 1860.

Mr. EARLE, of Worcester. I rise to a question of order. I submit that this proposition has once been voted down by the Convention, and, therefore, it is not competent for the gentleman to offer it again.

The PRESIDENT. Such a proposition may have been offered in Committee of the Whole, but not in Convention.

Mr. HOOPER asked for the yeas and nays upon the adoption of his amendment; but they were not ordered, one-fifth of the members present not voting therefor.

The question was taken, and the amendment was disagreed to.

Mr. HALL, of Haverhill. I do not understand precisely this rule about limiting debate. I desire to say a few words upon the impracticability of a general banking law. I ask the Chair whether it will be in order for me to speak upon that subject?

The PRESIDENT. The rule limits the time to be occupied by any speaker upon any one question, to fifteen minutes. The gentleman from Haverhill spoke out his fifteen minutes, and objection was made to his speaking longer. No motion was made for leave to proceed. If such a motion had been made, the Chair would have put the question to the Convention.

Mr. BROWN, of Douglas. I move that the gentleman have leave to proceed.

Mr. FROTHINGHAM, of Charlestown. I rise to a point of order. I understand the gentleman from Haverhill, (Mr. Hall,) proposes to address the Convention upon the question of the propriety or impropriety of a general banking law. What has a general banking law to do with the subject before the Convention?

The PRESIDENT. It is competent for the Convention to grant leave to speak upon any subject.

Mr. BROWN, of Medway. The rule limiting debate to fifteen minutes has been adopted by the Convention, and I hope it will be carried out.

Mr. GRISWOLD, for Erving. I desire to say one word upon this motion. I should be very glad to hear the remarks of the gentleman from Haverhill, but it must be evident that if we grant leave in one case, we must grant leave to every other gentleman in the Convention, who asks it, to speak beyond his time, and the rule at once becomes no rule. If this were a nicely balanced question, upon which we needed more light, perhaps I might vote to violate the rule; but from a vote we have already taken, there can be no doubt as to what will be the final result; and for this reason, I shall vote to sustain the rule.

Mr. PLUNKETT, of Adams. I move to strike out the first resolution.

The resolution was read as follows:—

*Resolved*, That the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased, under general laws.

Mr. HALL, of Haverhill. Will it be in order now to speak upon the subject which I indicated a minute ago?

The PRESIDENT. The gentleman is entitled to speak fifteen minutes upon the pending question.

Mr. HALL. This resolve, as I understand it, proposes a change in our banking system. This resolve, which it is now proposed to strike out, provides that "the legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any charter bank; but corporations may be formed for such purposes, or the capital stock of charter banks may be increased under general laws."

Well, Sir, the chairman of this Committee (Mr. Frothingham) spoke his hour upon this subject, and now he turns and asks what the subject of banking laws has to do with the question under consideration. Now it seems to me, that

as the general banking law now in existence was framed by that gentleman himself, and that as it was very theoretically and cautiously drawn by him in 1851, when it passed the legislature, it may have something to do with this question. Now it is proposed to change the whole banking system of the Commonwealth, to conform with that general law; and it seems to me, therefore, that the question of a general law is *the question*, and the whole question for consideration in relation to this resolution. Yet, after talking an hour upon it, that gentleman now very plainly asks, "what has a general banking law to do with this resolution?" But, there was one thing I did not exactly understand. This bill passed the legislature in 1851, with a Coalition majority of forty-six in the House, and of so many in the Senate that you could not find the other party. And yet, that same legislature, with that same majority, during the same session, passed some forty odd special bank charters, granting about $6,000,000, under the old system after that general law passed. The chairman of this Committee understands all that. The explanation of the matter, as near as I can judge, was about this: The gentleman from Charlestown (Mr. Frothingham) wanted a general banking law, and a large portion of his friends did not object to it so long as they could still continue to get their special charters, under the old system.

Mr. FROTHINGHAM, (the floor being temporarily yielded). I rise to make an inquiry. The gentleman from Haverhill, has referred to the granting of special charters in the session of 1851, and he has referred to me as being connected with those proceedings. Now, I ask him to state to this Convention, whether I did not out and out oppose the granting of these special charters; whether I did not oppose the reissue of the old charters, and if I did, whether his statement is correct?

Mr. HALL, (resuming). The gentleman certainly did oppose the granting of these special charters, and I do not say that he did not. I stated that the legislature in 1851, with a Coalition majority of forty-six in the House, and with a majority of so many in the Senate that you could not find the other party, passed acts incorporating banks with $6,000,000 of capital, after they had passed this general banking law. That is what I said, and I repeat it. It is true, and the gentleman from Charlestown knows it. Yet, that gentleman now comes in here and wants to put into the Constitution a provision which would secure a monopoly of all the banking business in the Commonwealth, to these fifty millions of bank capital which is already incorporated, and to the persons who hold those charters, for the next twenty years.

Now, Sir, I caution those gentlemen who want this Constitution ratified, against putting any such provision into the Constitution. Sir, I do not want the Constitution which we shall adopt, to go before the people with any such provision in it. I believe it would do more to induce the people to repudiate it, than any provision that we shall be likely to incorporate. Now, Sir, the gentleman from Charlestown knows—my friend from Braintree (Mr. Stetson) knows—just as well as I do, that with the present general banking law, the incorporation of new banks which can compete with those in existence, is perfectly impracticable.

Mr. STETSON, (in his seat). I do not know it.

Mr. HALL. Well, Sir, I think I can show the gentleman that it is. In the first place, the statute of 1851 is specific about the stocks you shall be allowed to put in. You may put in United States government stock, which every one knows you cannot buy. You may put in the stocks of the State of New York, which every one knows, is not to be had. Some of it was issued for the purpose of their canal enlargement; but it was all taken up for her own purposes. Rhode Island stock nobody could buy, and I should not want it if I could. I tried as treasurer to collect $500 there, and could not.

The States of Connecticut, Vermont, and New Hampshire are not issuing any stocks. The State of Maine is not issuing any, and they have $200,000 in their treasury, arising from the sale of their public lands. We might, in this State, derive as much benefit, had a sale been completed last year, of our interest in those lands. Massachusetts has not issued but $200,000 of State stock for the last two years. The towns and cities of the Commonwealth are not hiring money to any amount. If I may be allowed to refer to my own acts, I will say that as treasurer, I sent notices to every city and town of the Commonwealth, asking them to hire the money of the State belonging to the school fund, for any term of years from two to ten, at six per cent., and the amount which could be loaned was only $93,000 or about $42,000 a year. This was all the money that was wanted by the towns of the Commonwealth. They are rich and do not want any money. The State has not issued its scrip to any amount, for several years. Suppose the State should issue its scrip to build a tunnel, or suppose at the next legislature or some subsequent legislature, the advocates of the tunnel should come in and say to the bank men, give us five

millions loan, and you will get that amount of State scrip upon which to do banking business. What would it cost? Can you start a bank under it? My friend from Braintree, (Mr. Stetson,) who understands the science of this matter, said that banking was a science, and I take it for granted that he understands it, because he is a director in a bank that pays large dividends, and has a good reserve besides. Suppose my friend from Braintree wished to start a bank out at his place with a $100,000 capital, I desire to know how he may start it under this general banking law. The gentleman would find, if he enters into a calculation upon this subject, that there would be a difference of three per cent., in round numbers, between starting a bank under the general law, and starting it under the other system. In the first place, the stock to be lodged with the auditor must be "equal to a stock of this State producing six per cent. per annum."

Now then, you must buy $120,000 to get $100,000 bills, and pay a *premium* of six per cent. if issued in dollar bonds, or fifteen per cent. if issued in sterling bonds, payable in London, as I was offered, as treasurer of the Commonwealth, during the last year, the highest price I have named, by a foreign banker, which will make a difference of interest to begin with, of $2,100, to which add the interest on $25,000, which the present system gives you a right to circulate, more than the general law—which is $1,500, making $3,600, from which you may deduct the bank tax on three-fourths of the capital, $750, leaving $2,850, yearly difference against him, besides, in the end, the entire loss paid as *premium*.

Will he, understanding the science of banking, start a bank under such circumstances? He will do no such thing. I have stated this matter precisely as it exists, and I challenge the gentleman from Braintree, or any other gentleman, to disprove the statement I have made. I say it is an impracticable thing, the idea of starting a bank under that law.

Mr. NAYSON, of Amesbury. I wish to ask the gentleman a single question. If the bank of which he is cashier, which was incorporated at the last session of the legislature, did not petition for an increase of capital?

Mr. HALL. I believe there was a petition of the kind presented, but I did not sign it, and had nothing to do with it. But, if such a charter had been granted us, we could have used it, having now a charter that we can circulate upon, to the amount any bank can keep in circulation, of the capital of $500,000, which is entirely a different matter from starting a bank when you want circulation and can get it only under the provisions of the *present* general banking law. And now, one question.

Can the general banking law be amended?

I have been asked this question many times, by my friends, and my answer is this: it can be amended by extending the limit of stocks for investment, and take railroad stocks and bonds, and real estate; and when I name these, and other investments, gentlemen say at once, they do not like them as a basis for banking, because they are a fluctuating and doubtful class of securities. And if this is true, is it desirable to change our present system for one so full of difficulties?

Now I ask gentlemen from all parts of the Commonwealth, to pause and reflect, before voting to deprive yourselves of the privileges enjoyed by your neighbors, unless you pay a difference of three or four per cent., as I have shown, besides losing the premium you must pay to procure public stocks, because when they mature, you only get the face or par value. We have villages growing up in all parts of the Commonwealth, and if they desire banks for the convenience of business, and the investment of surplus capital, by persons preferring this mode of investment, why vote for an untried and impracticable system, that may prevent you attaining the very object which you are so soon likely to need and desire, when we have a system adapted to our wants, and in my opinion, secure?

My impression is, that we should leave this whole subject in the hands of the legislature, and I hope the resolves will not pass.

Mr. DE WITT, of Oxford. The gentleman for Abington (Mr. Keyes) entirely misunderstood me in the course of his remarks, when he alluded to the position I had taken. I say that the banks here are well managed, and that their notes are perfectly good. I desire to say one word in reply to the gentleman from Boston, (Mr. Schouler,) the other day. He said that this general law was carried through a compromise. I say that you could do nothing under this general law, except by way of this compromise. You can no more do without it, than we could send a pound of Dupont's powder through Shadrach's furnace. [Laughter.] The gentleman speaks of monoply. But the people agreed to give all these various corporations this renewal of their charter. I am a law-abiding man, and I stand by the law, if I can, until it is repealed or modified.

Mr. DUNCAN, of Williamstown. I move the previous question.

Mr. FROTHINGHAM, of Charlestown. So far as the argument is concerned, I have no objec-

tions to the previous question, though I should be happy to hear any and every objection which might be made to these resolves. I have not spoken to-day in relation to them, but had marked down several things which had been said by my friend from Haverhill, (Mr. Hall,) and the gentleman for Abington, (Mr. Keyes). I should like to have a few minutes to reply to these gentlemen, because I really think I could reply to them successfully. I would ask the gentleman to withdraw his demand for the previous question, so as to allow me to make a few remarks.

The previous question was seconded, and the main question ordered.

The PRESIDENT. The question is, first, upon striking out the first resolution, which reads as follows:—

*Resolved*, That the legislature shall have no power to pass any act, granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under the general laws.

Mr. HALL, of Haverhill, demanded the yeas and nays, which were ordered.

The question was taken, and there were—yeas, 99; nays, 158—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Alley, John B.
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Russel
Beal, John
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Copeland, Benjamin F.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Curtis, Wilber
Davis, John
Davis, Solomon
Dawes, Henry L.
Deming, Elijah S.
Denison, Hiram S.
Eames, Philip
Easland, Peter
Farwell, A. G.
Fay, Sullivan
Fowler, Samuel P.
Freeman, James M.
Gardner, Henry J.
Gilbert, Wanton C.
Graves, John W.
Hale, Artemas
Hall, Charles B.
Hammond, A. B.
Hayden, Isaac
Hayward, George
Hersey, Henry
Hillard, George S.
Hinsdale, William
Hopkinson, Thomas
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Jackson, Samuel
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Keyes, Edward L.
Knight, Hiram
Knight, Joseph
Kuhn, George H.
Lincoln, Abishai
Lincoln, F. W., Jr.
Lord, Otis P.
Loud, Samuel P.
Miller, Seth, Jr.
Mixter, Samuel
Moore, James M.
Oliver, Henry K.
Orcutt, Nathan
Packer, E. Wing
Park, John G.
Parker, Samuel D.
Perkins, Jonathan C.
Plunkett, William C.
Putnam, John A.
Read, James
Reed, Sampson
Sampson, George R.
Sargent, John
Schouler, William
Simonds, John W.
Souther, John
Stevens, Granville
Stevenson, J. Thomas
Swain, Alanson
Tileston, Edmund P.
Train, Charles R.
Underwood, Orison
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilder, Joel
Wilkins, John H.
Winn, Jonathan B.

NAYS.

Adams, Shubael P.
Allen, Charles
Allen, James B.
Allis, Josiah
Bancroft, Alpheus
Barrett, Marcus
Bennett, Zephaniah
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Bradford, William J. A
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Buck, Asahel
Butler, Benjamin F.
Case, Isaac
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Clark, Henry
Clark, Ransom
Cleverly, William
Cole, Lansing J.
Cole, Sumner
Cooledge, Henry F.
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Thomas
Dean, Silas
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Earle, John M.
Edwards, Elisha
Edwards, Samuel
Fiske, Emery
Fowle, Samuel
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gardner, Johnson
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Green, Jabez
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hazewell, Charles C.
Heath, Ezra, 2d,
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Hoyt, Henry K.
Huntington, Charles P.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Kimball, Joseph
Knight, Jefferson
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Littlefield, Tristram
Loomis, E. Justin
Marvin, Abijah P.
Merritt, Simeon
Monroe, James L.

Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Nash, Hiram
Nayson, Jonathan
Newman, Charles
Nichols, William
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Rantoul, Robert
Rawson, Silas
Rice, David
Richardson, Daniel
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sheldon, Luther
Sherril, John
Simmons, Perez
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Increase
Taft, Arnold
Thayer, Willard, 2d,
Thomas, John W.
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
White, George
Wilbur, Daniel
Wilbur, Joseph
Williams, Henry
Williams, J. B.
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Josiah G.
Allen, Joel C.
Allen, Parsons
Alvord, D. W.
Andrews, Robert
Appleton, William
Austin, George
Baker, Hillel
Ballard, Alvah
Ball, George S.
Banks, Nath'l P., Jr.
Bartlett, Sidney
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beebe, James M.
Bigelow, Jacob
Blagden, George W.
Bliss, William C.
Boutwell, George S.
Boutwell, Sewell
Bradbury, Ebenezer
Braman, Milton P.
Brown, Alpheus R.
Bryant, Patrick
Bullen, Amos H.
Bunpus Cephas C.
Burlingame, Anson
Cady, Henry
Carter, Timothy W.
Caruthers, William
Chapin, Chester W.
Choate, Rufus
Churchill, J. McKean
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Coggin, Jacob
Crittenden, Simeon
Cummings, Joseph
Cushman, Henry W.
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dehon, William
Doane, James C.
Dorman, Moses
Easton, James, 2d,
Eaton, Calvin D.
Eaton, Lilley
Ely, Homer
Ely, Joseph M.
Eustis, William T.
Fellows, James K.
Fisk, Lyman
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
French, Charles H.
French, Rodney
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Josiah W.
Hale, Nathan
Haskell, George
Haskins, William
Heard, Charles
Henry, Samuel
Heywood, Levi
Hobbs, Edwin
Houghton, Samuel
Howard, Martin
Howland, Abraham H.
Hunt, Charles E.
Huntington, Asahel
Huntington, George H.
Hyde, Benjamin D.
James, William
Johnson, John
Kellogg, Martin R.
Kingman, Joseph
Kinsman, Henry W.
Knowlton, Charles L.
Knowlton, J. S. C.
Ladd, John S.
Langdon, Wilber C.
Little, Otis
Livermore, Isaac
Lothrop, Samuel K.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Theophilus R.
Mason, Charles
Meader, Reuben
Morey, George
Morss, Joseph B.
Morton, William S.
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Paige, James W.
Paine, Benjamin
Paine, Henry
Parker, Adolphus G.
Parker, Joel
Parris, Jonathan
Parsons, Samuel C.
Parsons, Thomas A.
Partridge, John
Payson, Thomas E.
Peabody, George
Phinney, Silvanus B.
Pomroy, Jeremiah
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Richards, Luther
Richardson, Nathan
Rockwell, Julius
Rockwood, Joseph M.
Ross, David S.
Sherman, Charles
Sikes, Chester
Sleeper, John S.
Stacy, Eben H.
Stevens, Charles G.
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Charles
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thompson, Charles
Tilton, Abraham
Tower, Ephraim
Tyler, John S.
Wales, Bradford L.
Wallace, Frederick T.
Warner, Marshal
Whitney, Daniel S.
Whitney, James S.
Wilkinson, Ezra
Wilson, Henry
Wilson, Milo
Wood, William H.
Woods, Josiah B.

Absent and not voting, 162.

So the motion was not agreed to.

The resolves were then ordered to their final passage, by a vote of 108 ayes to 67 noes.

*Termination of Debate.*

Mr. WESTON, of Duxbury. I move that debate cease on the resolves upon the subject of the election of justices of the peace, at five minutes before two o'clock.

Mr. LORD, of Salem. Upon a question of such magnitude, and it being uncertain at what time we shall go into Committee, I ask that the question be decided by yeas and nays.

Mr. GRISWOLD, for Erving. This question

has already been before the Committee of the Whole, and has been pretty well discussed. It is the desire of the chairman of the Committee that the matter should be taken up now, as he desires to leave this afternoon.

Mr. LORD. I have no objection to taking up the question now, but my objection is to saying beforehand, that a matter shall not be discussed at all.

Mr. WESTON. I will withdraw the motion I made.

*Appointment.*

The PRESIDENT. The Chair will announce the appointment of Mr. Upton, of Boston, as a member of the Committee to whom the subject of Future Amendments to the Constitution has been committed, in the place of Mr. Hazewell, of Concord, who is excused from serving.

*Election of Justices of the Peace.*

On motion of Mr. WESTON, of Duxbury, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Morton, of Andover, in the chair, upon the subject of the election of justices of the peace. The pending question being on the adoption of the amendment proposed by Mr. Hallett, to insert, after the word "shall," the words "not extend to hearing and trying of causes, or the issuing of warrants in criminal cases."

The amendment was adopted.

Mr. HALLETT. I wish to suggest another amendment, which seems to me to be proper to carry out what now exists. I understand the third proposition has been stricken out, relating to justices of the quorum. It is obvious that you must have them, or else you must call upon other justices to swear persons out of prison. I move, therefore, to strike out the line, "there shall be two classes of justices," &c., and also to strike out the word "who," in the second paragraph, so that it will read, "trial justices shall be elected," &c., instead of "trial justices, who shall be elected;" and in the second paragraph, it will read, "justices of the peace shall be appointed by the Governor and Council, for the term of seven years," &c.

Mr. BISHOP, of Lenox. The amendments proposed are a departure, in a good degree, from the Report of the Committee. The Committee, in the first place, reported in favor of the election of the justices of the peace; and for the reason that these offices are local, in some sense, and would be chosen in the towns where the individuals called upon to make the choice would understand better their just qualifications, than any other power. Then it was proposed that after the election should have been made,—after provision was made for their election and for the tenure of their office,—that the legislature should have the farther control over this matter, that they should just specify the number to be chosen and determine upon the grade; or, in other words, whether there should be justices of the peace of two distinct grades; that they should determine the classification of these officers.

Now, Mr. Chairman, I regard it as proper that this matter should be left to the legislature; that it should not be fixed unalterably by any constitutional provision. I think we go far enough when we provide for the election of justices of the peace, and when we determine their tenure. The legislature should determine their number; and if it is necessary to fix a classification, the legislature should determine that classification. It is proposed by the amendment reported by the Committee, that there be a specific number, to be ascertained, in the first place, by the number of towns, and in the second place, by the number of inhabitants; each town to elect a justice of the peace, and a justice to be elected for every additional two thousand inhabitants. That may be convenient. I see no very serious objection to it; but, still, in many places, most unquestionably, a fewer number of justices than that would subserve the purposes of the community. And in many places there might be required a larger number than that. In many places there is very little litigation, and they would not have occasion for the services of a justice of the peace very often, and perhaps not once in a year, and that, too, in a town where there is a great number of inhabitants. In other places there might be a great deal of litigation, and a larger number of justices might be required. Now, that this matter should be left for the legislature to determine, we regarded as reasonable.

In regard to grades, we thought proper that the subject should be left to the legislature. I know of but two grades of justices of the peace. I mean by justices of the peace, those officers who have a right to hold a court, and who are authorized to determine controversies between individuals, or between individuals on one side and the State upon the other. Those two classes are, first, justices of the quorum; second, the ordinary justices of the peace. In this Commonwealth, the class called justices of the quorum has been maintained ever since the establishment of the Commonwealth. Whether it be necessary to retain the distinction any longer, it will be proper for the legislature to determine, and for

this reason. Their introduction was a matter of necessity originally. There were a great many duties assigned to justices of the peace; that officer was appointed in England by the crown. The justices became very numerous, and it became convenient, if not necessary, that important, arduous, difficult, and perplexing duties should be assigned to these officers; and a higher grade of justices was called for, of men somewhat acquainted with the laws, men of sound judgment, and when perplexing questions were presented for the decision of two or more of the justices, one or more of this higher grade of justices was selected, to be associated with the ordinary justices, and, by that mode, sometimes difficult questions were settled without a resort to the higher tribunals, and duties difficult of execution were performed by this court. Now, whether this distinction is necessary, I cannot determine. The Committee regarded, that if a different class from the ordinary justices was necessary, the legislature should have the right to create them; or, if they were in existence, to continue them.

It is unquestionably true, that these officers perform duties that never were originally assigned to them. They were, originally, the conservators of the peace. They had little to do, and indeed nothing to do with acts merely ministerial, unless those acts were incident to the discharge of their main duty. They were anciently chosen by the people, or by the freeholders convened by the sheriffs. They exercised nothing but criminal jurisdiction, and I believe that in England to this very day, they exercise no civil jurisdiction; that is, they try no civil causes. But there have been duties devolved upon this class of officers, which have rendered their multiplication almost necessary, and the greater part of their duties have become ministerial and administrative; and that, I apprehend, has occasioned the difficulties of which there has been so much complaint.

Now justices of the peace—and I wish to retain that name, for if officers of another character are to be created, if commissioners are to be appointed to execute merely ministerial or administrative duties, I choose that they should receive the right appellation—justices of the peace are judicial officers; all justices of the peace, by the very force of the term, are judicial officers. There are justices of the court of the king's bench, justices of the court of common pleas, of the supreme judicial court, and a variety of tribunals administered by individuals denominated justices; and the term implies a judicial power.

Now that has been the great difficulty, and the subject of complaint; it is the multiplication of justices of the peace to such an extent, that it became, or was regarded as necessary, some few years since, to create a distinct class of justices called trial justices; and to them was assigned all the judicial duties proper; and that is a reason for not making the proper distinction. Justices of the peace not only exercise judicial power, but they exercise an immense number of ministerial powers; and the ministerial duties which have been devolved upon them, have been the occasion of their multiplication.

A justice of the peace is desired in a community where there is no litigation at all; and an application is made for his appointment. It is contemplated that he will exercise only certain specific duties, that he will act, not as a judicial, but as a merely ministerial officer. No litigation whatever occurs in the community from which proceeds the application for his appointment as a justice of the peace; and he is appointed a justice of the peace, for what? To take the acknowledgment of deeds; for in every community where there is any business transacted, there are conveyances of real estate, and an officer authorized by law to take an acknowledgment of deeds is necessary. He is appointed for another purpose in this community: to issue appraisers warrants, to appraise the inventory of deceased persons, to administer a great variety of oaths which are required to be administered to individuals assuming trusts. This individual is appointed for that purpose. He never contemplates exercising any judicial powers; and it is not contemplated by those who solicited his appointment, that he shall sit in any civil or criminal case whatever; and the commission is granted for no other purpose in the world than for purposes of convenience, that he may perform those ministerial acts which the convenience of the neighborhood require. In that way the justices of the peace have been multiplied; in that way justices of the peace have been created who were not competent for the appropriate duties of justices, the holding of courts and the trying of criminal and civil causes. Neither the legislature nor the executive, nor anybody else is to blame for the multiplication of these justices, and for the difficulties which these frequent appointments have created; for a justice of the peace, when once appointed, is compelled by the Constitution and by his oath, not only to perform those duties for which his appointment was sought, but to perform other duties. His commission directs him to keep the peace; he is denominated as a person assigned to keep the peace; and if a complaint is made to him, it is not for him to determine whether he will receive that complaint and issue a warrant upon it or not;

but he is bound by his oath, and by the Constitution, and by the trust which he has assumed, to issue his warrant; and however incompetent he may be to try any question brought before him, however difficult the questions which may arise in the course of that trial, he is bound to proceed with the trial; and great complaints have been made in consequence of that matter.

Now, the Committee propose that the legislature shall designate the number of justices to be appointed; that the legislature shall determine their classification, because the number may vary from time to time; and I regard it as improper, or at least as unwise, to fix by the Constitution any definite number—to say that no greater number than such as is prescribed, shall be appointed.

[The time allotted under the rule, expired.]

SEVERAL MEMBERS. Go on! Go on!

Mr. BISHOP. I am opposed to special privileges. If there is a general rule I shall abide by it.

The question was then taken on the amendment proposed by the gentleman for Wilbraham, (Mr. Hallett,) and it was agreed to.

Mr. HALLETT. I desire to make an additional amendment to the second proposition, by inserting after the words "justices of the peace" the words "justices of the peace and the quorum, justices throughout the Commonwealth, and commissioners to qualify civil officers," shall be appointed, &c.

Mr. LORD, of Salem. I would ask the delegate representing Wilbraham, whether he has observed that the same resolution provides that trial justices shall have the same jurisdiction, powers, and duties, that are now exercised by justices of the peace, justices of the quorum, and commissioners to qualify civil officers; and if he has observed that, I would inquire whether the change which he has proposed does not involve the necessity of striking out a part of the first resolution?

Mr. GRISWOLD, for Erving. I would ask the gentleman from Salem if there is any objection to that—if it will not give them the same jurisdiction?

Mr. LORD. I should have objection to the multiplication of justices of the quorum and justices to qualify civil officers. I think the number specified as trial justices is enough for all purposes. I should have had objection to the amendment of the gentleman for Wilbraham, which was adopted; for I think it was hardly understood by the Convention, when the question was taken, what it was that they were adopting. I desire to call the attention of the gentleman to it, to see whether he intends to have these officers provided for in the first section. I do not mean to enter into any argument on the subject at all.

Mr. GRISWOLD. The objection which is raised by the gentleman from Salem is valid to this extent: it does multiply the number of officers who would have jurisdiction upon the subjects that justices of the quorum and commissioners to qualify civil officers have. If we preserve these officers, I see no objection to striking out the words "justices of the quorum and commissioners to qualify civil officers" from the first section, inasmuch as it is comprised in the other amendment, and limiting the jurisdiction of trial justices to the jurisdiction which justices of the peace have. At the proper time I will move to strike out those words which I have indicated.

The question being then taken on the amendment of Mr. Hallett, as modified, no quorum voted.

Mr. EARLE moved that the Committee rise, and report to the Convention that no quorum was present; which was agreed to, and the Committee accordingly rose.

IN CONVENTION.

The President having resumed the chair, the chairman, Mr. Morton, of Andover, reported that the Committee of the Whole had had under consideration the subject of the election of justices of the peace, and had made some progress therein, but had come to no conclusion thereon, and finding themselves without a quorum, had instructed him to report that fact to the Convention.

On motion by Mr. EARLE, the Convention then adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M.

### *Leave of Absence.*

Mr. FAY, of Southborough, from the Committee on Leave of Absence, reported that leave of absence for the remainder of the session be granted to Mr. Henry, of Prescott, and Mr. Gale, of Heath.

The question being taken on the adoption of the Report, it was decided in the affirmative.

### *Justices of the Peace.*

On motion of Mr. BUTLER, of Lowell, the Committee of the Whole was discharged from the farther consideration of the resolves concerning the election of justices of the peace.

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of that

item on the Orders of the Day relating to the subject of the

*Commissions of Judges.*

The resolve was read, as follows:—

*Resolved*, That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

Mr. BUTLER moved to amend by inserting the tenth day of August instead of the first.

The amendment was agreed to, and the resolve was ordered to a second reading.

*Fifteen Minutes' Rule.*

Mr. LORD, of Salem, moved that the rule by which speeches are limited to fifteen minutes be rescinded.

Mr. LORD. I make this motion, Sir, as a matter of duty, not supposing that it will prevail. But, Sir, I feel bound to do it, from several circumstances. Last Saturday a subject was reported to this Convention, or considered in Committee of the Whole. The chairman of the Committee from which the report was made, rose and addressed the Convention one hour on the subject. My friend from Boston got up and talked for three or four minutes, not against the resolve at all. Immediately the gentleman from Fall River rose, and addressed the Convention for half an hour; thereupon the gentleman from Braintree occupied his half hour, and the gentleman from Melrose another, all on the same side. These remarks embraced the whole subject of banking. And there is not a gentleman who knows anything about the subject, but who knows that the chairman of the Committee has an exceedingly narrow space in which to explain his views. The subject came up this morning, and a gentleman commenced to speak in opposition to the proposition; he was, however, restricted to fifteen minutes, and was obliged to get a friend to move an amendment, so as to enable him to continue his remarks, under the technicality of having a new question to speak to. Now, such shifts as these are certainly not dignified. Well, Sir, we have on the calendar the subject of the Bill of Rights, and the chairman of the Committee on that subject, I know, cannot present his views within fifteen minutes. Could any other gentleman do so? Here, Sir, we have the subject of justices of the peace, and the chairman of the Committee on that subject got up, but had not entered upon the subject; and when he had exhausted half an hour, he was interrupted; but, being excessively democratic, he said he did not ask any special privileges, and sat down. Now, I suppose there are gentlemen here who desire to speak on the subject of justices of the peace; but every one knows that no man can in fifteen minutes explain his views; he may, it is true, make a suggestion, but it is impossible for him to discuss it. No man can within the time limited by the rule that is now in force. And, I suppose, no man would undertake to discuss the subject without having time enough afforded him to state his premises, even without enforcing them in the slightest degree by arguments or illustrations, and this in relation to a subject possessing so many ramifications.

Now, Sir, I have no objection at all to stopping the work of the Convention just as soon as gentlemen please, but my objection is to making important changes in the Constitution, without allowing any gentleman time enough, even, to state his objections. I have no desire to protract the session of this Convention; and, if gentlemen will abandon their attempts to change the Constitution farther—if gentlemen will abandon their attempt to change the Constitution in regard to this subject of justices of the peace—a subject which I think requires reform more than any other; but, so long as important changes are intended, and we are bound to act on those changes, it seems to me we ought, at least, to have time enough to state our reasons for advocating or opposing such changes.

It is for these reasons that I ask that the rule shall be rescinded, because I know that no man can discuss the subjects submitted.

Mr. WOOD, of Fitchburg. I hope, Mr. President, that the rule will not be rescinded. I have been here from the beginning of the session of the Convention until this late period; and I have been compelled to listen to a great many long speeches, which I thought were wholly unnecessary, until I have become heartily sick of a certain vote which we passed here, that all that was said in this Convention should be reported and handed down to posterity in the records of this Convention. I think that order has made more speechifying, and has caused us to spend a great deal more time than we otherwise should, the object being, on the part of speakers, as it seems to me, to perpetuate their names, more than it was to get through with the business which we have been sent here to attend to, in revising the Constitution. I have not taken up much time in making speeches, because I have not been anxious of having my name thus perpetuated; when I die, let me go. But it is not so with many of the members of the Convention; and many of the

speeches which have been made, have not been delivered so much for the purpose of enlightening us, as they have been for the purpose of beautifying those pages that are to be read hereafter, as containing the eloquence and the wisdom of this Convention. We have now arrived, as I believe, nearly to the close of our labors here; and the best thing that we can do is, to wind up our concerns as soon as we can and go home. We saw how it was in the debate on Saturday, when another question was under discussion. I wished to speak on that question, and there were probably others in similar circumstances, who had given the matter a careful examination; but one gentleman spoke an hour, another a half hour, and another a half hour, until gentlemen upon the other side had no opportunity to speak at all. The subjects which are now to come before us, have, most of them, if not all, been carefully examined; and then why not limit the time to fifteen minutes? If that is the case, the Convention will not be so impatient, and they will be willing to hear both sides. It is not so much eloquence and oratory that we want as it is substance and sound argument; and if gentlemen will state their points without amplifying so much, we can understand them if there is any substance in their views, and we can act accordingly, without any of these ornaments of rhetoric. There is not a single question which has yet come before us, the points of which could not have been stated in fifteen minutes; but gentlemen want the record of their speeches to go down to posterity, that their children and their children's children may see how their fathers and their grandfathers talked upon these subjects. I am entirely opposed to the proposition to rescind this fifteen minutes' rule; instead of that, I wish we had adopted it much earlier in the session. There are many subjects which have been introduced into the Convention, upon which I have felt deeply interested; but there has not been one upon which, if I had studied it carefully and taken pains to condense my ideas, I could not have stated all the leading points without exceeding a fifteen minutes' speech. So can the gentleman from Salem. I know that that gentleman has a power of condensation; and that he can bring into fifteen minutes the consideration of the most elaborate and complicated question, if he chooses to do so. I see no necessity, therefore, for rescinding the rule in regard to this matter. It is now nearly the end of July; and there was, throughout the community at large, an expectation, when this Convention commenced its session, that it would expire about the first of July. Instead of that, it is now the last of July; and if we rescind this rule, I see nothing to prevent our going on for another month, or even longer. Sir, there is no need of it. This is a rule that commends itself to all of us. Had I been one of these long talkers, —had I been unfortunate enough to possess the power of eloquence, and had thus been tempted to spread out my thoughts in page after page of the journal of our debates—I should not have said what I have said. Every gentleman knows that I have not taken up much of the time of the Convention; and I have often regretted that our proceedings were so much delayed by the protracted remarks of some of my associates, who use very little power of condensation in expressing their views. I hope we shall try to have a reform in this respect, so as to bring our session to a close. Without taking up any more time, I will conclude by expressing the hope that the rule will not be rescinded.

The question being then taken, the motion was not agreed to.

*Election of Justices of the Peace.*

Mr. WESTON, of Duxbury, moved that debate on the subject of the election of justices of the peace should cease at four o'clock this afternoon. The motion was agreed to.

Mr. WALKER, of North Brookfield. I move that the Convention now proceed to the consideration of the resolves on the subject of the election of justices of the peace.

The motion was agreed to.

Mr. LORD, of Salem. Is that matter in the Orders of the Day?

The PRESIDENT. Certainly it is.

Mr. LORD. Does the discharge of the Committee of the Whole from its farther consideration place it in the Orders of the Day without any farther action?

The PRESIDENT. The Chair is of opinion that it does. He does not know where else to put it. The question is on the resolves reported by the Committee of the Whole. The gentleman from Lenox, (Mr. Bishop,) is chairman.

The resolves were read as follows:—

1. *Resolved*, That it is expedient to amend the Constitution, so as to provide that the electors of the several towns shall elect, in such manner as the legislature may direct, Justices of the Peace, whose term of office shall be three years, and whose jurisdiction shall extend throughout the county in which they may be elected; their number and classification shall be regulated by law; they may be removed after due notice, and an opportunity of being heard in their defence, by such court as may be prescribed by law, for causes to be assigned in the order of removal.

2. *Resolved*, That it is expedient so to amend

the Constitution that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

3. *Resolved*, That it is expedient to provide in the Constitution, that, in case of vacancy, by resignation or otherwise, of any state, county, or district officer, whose election is provided for in the Constitution, the Governor shall issue his warrant to the mayor and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall happen; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill vacancies until an election by the people.

Mr. BUTLER, of Lowell. I move the amendment which was presented in Committee of the Whole, before the Committee was discharged from the farther consideration of this subject. It will be found in Document 121, and was offered by the gentleman from Bernardston, (Mr. Cushman). It is to substitute the following for the two first resolutions, as reported by the Committee :—

*Resolved*, That it is expedient to amend the Constitution as follows :—

There shall be two classes of Justices of the Peace, viz. :—

1. Trial Justices, who shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties that are now exercised by Justices of the Peace, Justices of the Quorum, and Commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2. Justices of the Peace, who shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of Justices of the Peace shall extend only to the acknowledgment of deeds, the administration of oaths, the issuing of subpœnas, and the solemnization of marriages.

Mr. MORTON, of Andover. I suppose that the object of the amendment offered by the gentleman from Lowell, (Mr. Butler,) is to place the matter precisely as it was when under consideration by the Committee of the Whole. With his permission, I will offer an amendment, which, I think, will better effect that object. It is to strike out of the first resolve the words, "There shall be two classes of Justices of the Peace," and also the word "who," in the next line, and insert after the words "Justices of the Peace," in the second resolve, what I send to the Chair. If amended as I propose, the resolves will stand as follows :—

*Resolved*, That it is expedient to amend the Constitution as follows :—

1. Trial Justices shall be elected by the legal voters of the several towns for a term of three years. There shall be one in each town, and one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers, and duties that are now exercised by Justices of the Peace, Justices of the Quorum, and Commissioners to qualify civil officers; and such other powers as may be given them by the legislature.

2. Justices of the Peace, and Justices of the Peace and Quorum, and Justices throughout the Commonwealth, and Commissioners to qualify civil officers, shall be appointed by the Governor and Council for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of Justices of the Peace shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

Mr. BUTLER. As the amendment of the gentleman from Andover seems better suited to the object in view, I will withdraw my amendment.

The PRESIDENT. Then the question will be on the amendment offered by the gentleman from Andover, (Mr. Morton).

Mr. ALVORD. I wish to suggest a difficulty in the amendment proposed. It provides that justices shall be appointed by the Governor and Council, and that those now in office shall continue to hold their commissions. Under that amendment, justices of the quorum, and justices throughout the Commonwealth, may be appointed in any number as justices of trial. You, therefore, lose the benefit of the election of justices of trial by the people; for the governor will have power, indefinitely, to appoint justices for the trial of causes.

Mr. GRISWOLD, for Erving. I move to amend by striking out of the last line but two in the first resolution, as proposed by the gentleman from Andover, the words "justices of the quorum," and also the words "civil officers." If these words are not stricken out we shall have the offices of justices of the quorum, and of commissioners to qualify civil officers, indefinitely extended. I see no way to remedy the evil or to limit it, but by the amendment I have proposed. There are some differences of opinion about this; but I think we had better strike out the words I have indicated. It will prevent the creating of new offices, which is the object, if I understood it, of the gentleman for Montague, (Mr. Alvord,) and will have the justices as they are now, holding their commissions until they expire.

Mr. SCHOULER. I want to ask one or two questions before I can vote on this matter. I

want to know whether justices of the peace in cities are to be elected by the district system, or by the whole city? If they are to be elected by the whole city we shall have about seventy or eighty to elect every three years.

Mr. HALLETT, for Wilbraham. I would remind the gentleman from Boston that in the county of Suffolk there is a police court established. Justices of the peace in Suffolk have no power to try causes. All criminal cases that would be investigated by a justice of the peace are to be returned to the police court. This amendment relates to justices of the peace in towns; it cannot relate to any city or district in which there is a police court. The justices of the peace are to be appointed in precisely the same manner as heretofore, except that they are to be limited, all over the Commonwealth, as they are now limited—that they shall have no jurisdiction as a court.

Mr. KEYES, for Abington. I was not here when this question was up before; but it strikes me that, on reading this amendment and hearing the debate upon it, there is something peculiar about one paragraph—that is the paragraph which provides that trial justices shall be elected for each town, and that they are to have jurisdiction throughout the county. Now I should like to know what use there is in that? I suppose the design is comprehended under the general one that the people should elect their judges, but on examination it really seems to me that it is not based upon that at all. Take an instance. Here is one town in the Commonwealth which elects a trial justice. Anybody who has any business before a trial justice may elect whatever justice he pleases, and I may be called upon to answer before a justice that I had no hand in electing. I prefer that the governor should have the right to appoint, for this reason. We all know that offices of this kind are sometimes thrust upon people who do not want them, as a matter of joke, as, for instance, in the case of constables and militia officers. There may be towns which hold this office in contempt, and they may choose a man who is utterly unfit for the office, and that man may be selected by all the towns in the county to give his decision in cases. I am not lawyer enough to know what jurisdiction a justice of the peace has, although I am one myself; but these trial justices may be so selected, and their known sentiments or predelictions may be taken advantage of to the annoyance of individuals, and the subversion of just rights. Suppose, for instance, that a liquor case is to be tried, and a justice living in a remote town from where the case originated is known to entertain peculiar sentiments; the party complaining may go and employ him and drag the defendant from his own home and neighborhood, merely because he thinks he has found a justice that will coincide with his notions of right and wrong in this matter. The object of election by the people will, in this way, be defeated, as they will be subjected to the decisions of justices whom they had no hand in electing.

Mr. DAVIS, of Plymouth. I believe that the gentleman for Abington is mistaken in regard to the object of this amendment. I am sorry to hear that the gentleman from Lenox, (Mr. Bishop,) is so ill to-day as to be unable to be here, and that this question should have come up in his absence. I believe that gentlemen are aware that there is a greater evil than the gentleman for Abington supposes, from the great number of justices of the peace who are appointed by the governor, and who, to a certain extent, have power over the liberty and property of the people of the Commonwealth. I believe it is important that members of this Convention should know that there is a great evil which is felt by the citizens of the Commonwealth, arising from the present system, with regard to the power, jurisdiction, and learning of justices of the peace. It is a matter well known to many gentlemen of this body, who have had much experience at the bar, that persons who are appointed by the governor, as justices of the peace for the purpose of taking the acknowledgment of deeds, or of administering oaths, often take upon themselves to act as judges. They have been found issuing warrants day after day against the same individual, and even engaged in stirring up civil broils in the neighborhood, that they might thus have an opportunity of trying civil cases.

There are numerous cases in this Commonwealth of a like character, and one case has happened within my knowledge. A justice of the peace issued somewhere between fifty and a hundred warrants against two or three individuals in this State, in the course of three months. In each of those cases an appeal was taken, and all of them were quashed when they came to a hearing in the court of common pleas.

I believe it is to prevent this evil, and not from fear, as the gentleman for Abington would have it, that the people will elect certain persons as justices who are weak sisters, as he said, but it is because we know as an actual fact, that among the great variety of persons on whom the governor may feel it necessary to confer a commission as justice, there must be a great proportion little known to the governor; and therefore, the governor is not so well fitted as the citizens of

the several neighborhoods, to confer that honor upon the persons who are to execute the duties of that office. I do not believe, either generally, or specially, that the people of the small neighborhoods, as a matter of abstraction, to say the least, will not choose persons fully competent to exercise the duties of that office. It is for that reason that I regret that the motion has been made to except justices of the quorum from the general scope of the first resolve. I hope the present justices of the quorum will continue during the tenure of their commissions, and I do hope that these justices, having the power, as they do have, over the liberties of the people of the Commonwealth, will be elected by the people of the several towns. I know it is a crying evil, about which the citizens in almost every town have something to complain of, that there are persons among them who have the power, and who, either from ignorance or dishonesty, discharge or confine persons within the limits of the county, and who issue writs and give judgments either one way or the other, solely from motives of policy. And, with this view, and merely as an illustration, it will not be out of order to relate an anecdote. I knew in a town not fifty miles from the town which I represent, a justice, now dead, who was accustomed to try cases brought before him by a certain lawyer, residing in his neighborhood. It so happened, at one time, that an action was brought by another lawyer, which was returnable before this justice; and his patron, a lawyer of distinction, appeared for the defendant. In the course of the trial, this lawyer forced the counsel opposed to him, to make amendments from time to time. After those amendments were allowed, the case proceeded. A clear case was made out for the plaintiff, and when the justice came to deliver his opinion, "Well," says he, "I have allowed Mr. so and so to amend several times, and I do not think it is more than fair to give judgment for the defendant."

I hope, Mr. President, that this evil, which in particular cases is a trying one, will be prevented; and I hope we shall prevent it, so far as civil and criminal cases are concerned, and so far as the liberties of the citizens of this Commonwealth are at stake.

Mr. DAWES, of Adams. Is an amendment to an amendment in order at this time?

The PRESIDENT. There is already an amendment to an amendment pending. The immediate question is upon the amendment offered by the gentleman for Erving, (Mr. Griswold).

Mr. LORD, of Salem. Is not the resolution itself an amendment to the Report of the Committee; and if so, is not this an amendment to the amendment?

The PRESIDENT. The Chair understands, that pending the Report of the Committee, the delegate from Andover, (Mr. Morton,) moved to amend by striking out the first resolve, and to substitute the resolution reported in Document No. 121. Then the delegate for Erving, (Mr. Griswold,) moved to amend the first of these resolutions. That makes an amendment to the amendment.

Mr. LORD, of Salem. I wanted to express some views in relation to this subject, for the reason that I thought there was real necessity for reform. I supposed, if there were any matters in this Commonwealth, which were generally understood by the people of the Commonwealth as needing reformation, those two matters were the police courts and justices of the peace. These, by way of preëminence, were matters over all others, in my judgment, which demanded reform. Well, Sir, there are some traits of reform in this proposition, which I like. I like the idea of there being two classes of magistrates, the one being trial justices, and the other having some more limited jurisdiction—substantially the jurisdiction suggested by the gentleman from Bernardston, (Mr. Cushman,) when he first made the proposition yesterday to amend, with some qualification. I was dissatisfied with the amendment made in Committee of the Whole, for a reason which seems to be overlooked; and that is, that the trial justices which this resolution provides for, are enough, in all conscience, for all the ordinary purposes which require the exercise of discretion. Where justices are merely to take the acknowledgment of deeds, and do any other mere formal act, which could as well be done by machinery as by a magistrate, there I would let all these justices remain; but where the office requires the exercise of sound and legal discretion, I would have it limited to that class called trial justices.

Now, Sir, I have no objection at all to the election of trial justices. On the whole, I am rather inclined to think that is a good way to elect them. But I do not think it well to elect them without the power of keeping them in if the people want them. I do not think it well to take away from the governor the power of appointment, and yet leave to him the power of removal the instant the people appoint, if he choose to do so. I do not think it well to say that, when the people have elected one of these officers, the governor may put his veto upon him, and say he shall not hold his office an hour. I would just

as soon give the governor the power to remove every other officer. Although you put into the hands of the people the power of election, you say, also, that the very day they have exercised that power, the Governor and Council may remove. And that provision extends to judges of probate, sheriffs, commissioners of insolvency, registers of probate, and all other officers who are now appointed by the executive, but hereafter to be chosen by the people. The language, though not precise, still seems to me to include them all, for it says it is expedient so to amend the Constitution, that the governor may remove any officer in the former resolve, by this Committee mentioned. The Committee having made a Report, as to the election and tenure of office, and the Convention having acted upon it, and agreed that the judges of probate and other officers shall be elected for three years, these resolves provide that, notwithstanding what we have done, the Governor and Council may remove them at any time. I do not think it is proper to put the appointing power in one tribunal, and the removing power in another. Such is the effect of this resolution.

I do not think it well to adopt these resolves, as they stand, for another reason. I do not think it well to give to one town the power to elect a magistrate who shall exercise jurisdiction in another town where he cannot get, were he a candidate there, a single vote. It is a very convenient arrangement for a party who wants to dispose of some particular individual whom they do not want among them, and who will agree not to work at home, to place him where he may do all the mischief he does, not at home, but abroad.

It was answered just now, that the police court was established in the city of Boston. But, that is not a constitutional court, but merely an institution to be made or unmade, at the pleasure of the legislature. It may be changed, and, Sir, the town of Boston, if I am right in this, having one hundred and forty-eight thousand inhabitants, would have to choose seventy-four trial justices, and one more for corporate rights, making seventy-five trial justices, which the city of Boston have to elect every three years. I do not think that a necessary, or proper, or expedient provision.

But, there is another difficulty in these resolves, and that is, that no provision is made for the police court. I am inclined to think that the provision you have already passed in relation to judicial officers, clearly by its terms covers police courts. Now, this provision is entirely nugatory, until we have made provision for police courts.

There is another provision here—though I have not half time enough to mention the objections which I desire to suggest, and at the same time to suggest the remedies to many of them—but there is another provision, and that is, the one which gives the legislature the power to confer upon justices of the peace any authority which the legislature choose to confer upon them. It does not provide a jurisdiction which cannot be altered, not such as is given to them by the present Constitution; but they are to have all such other powers as may be given them by the legislature. I am not willing thus to create a tribunal of this kind, with power in the legislature, to confer upon it any jurisdiction, that it choose to confer. I am inclined to think that real wisdom would suggest the same course in relation to these resolves, that was suggested this morning in relation to the amendment proposed by the gentleman who represents Wilbraham, that they are not in a condition in which they can be matured. It is not for me to do anything more than simply to suggest, that although there is here an object to be obtained, and which I think there is not a single individual here who does not wish to obtain, yet it cannot be accomplished in this Convention. I have suggested some half a dozen objections, without having an opportunity, on account of the fifteen minutes' rule, to suggest a single remedy. There were other difficulties which suggested themselves to me; but of course, as the hour at which the Convention have determined to take the question, is near at hand, I cannot even state them.

Mr. CHANDLER, of Greenfield. It seems to me that there are several points in the resolutions which are objectionable. In the first place, I do not approve of the two classes of justices. It seems to me to be making an invidious distinction, and one altogether unnecessary, the one class to hear and determine important causes; and the other, to administer oaths on common occasions, to witness deeds, &c. Why should such a distinction be made? I believe if you submit the election to the people they will choose those who have common sense, and common information, and who, of course, will be capable to discharge all the duties which appertain to the office of justice of the peace. It seems to me, therefore, entirely unnecessary, and, indeed, even a burlesque upon the the people to suppose, that they will choose a man incapable of performing the duties of the office. And what a burlesque it would be upon the people! A stranger is passing through the town, he calls at a house, and inquires for your patrician justice, as he has a cause to submit to him. He goes his way. Another stranger comes along, and he inquires for your plebian

justice, as he wants him to marry his daughter. This distinction seems to me invidious and unnecessary.

[Here the President's hammer fell, the hour of four o'clock having arrived, at which time the Convention had ordered the question to be taken.]

The question was taken upon the amendment of the gentleman for Erving, (Mr. Griswold,) to strike out in the first resolve, the words, "justices of the quorum and commissioners to qualify civil officers," and it was adopted.

Mr. DAWES, of Adams, moved to amend by inserting in the first paragraph, after the word "towns" the words "and cities where no police court is, or may be established by law," so that the clause as amended, would read:—

Trial Justices shall be elected by the legal voters of the several towns and cities where no police court is or may be established by law, for a term of three years.

The amendment was agreed to.

Mr. ALVORD, for Montague, moved to amend the second paragraph, by inserting after the word "of," the word "such," and to strike out the words "of the peace."

So that instead of "*provided*, that the jurisdiction of justices of the peace, shall not extend," &c., it would read:—

*Provided*, That the jurisdiction of such justices shall not extend, &c.

The motion was agreed to.

Mr. CHAPIN, of Worcester, moved to insert an additional section to the amendment of the gentleman from Andover, (Mr. Morton,) as follows:—

3. Justices and clerks of the police courts in the several towns and cities of the Commonwealth, shall be elected by the legal voters of the several towns and cities, for a term of three years."

The amendment was agreed to.

Mr. MORTON, of Andover, moved to strike out in the last line of the first paragraph, the words, "and such other powers as may be given them," and to insert the words, "subject to alterations," so that the clause as amended, would read:—

They shall have the same jurisdiction, powers and duties, that are now exercised by justices of the peace, subject to alterations by the legislature.

Mr. STEVENSON, of Boston. I would suggest to the gentleman to strike out the words which he proposes, without inserting. The effect of leaving the clause as it now stands, or of striking out and inserting that which he proposes, will be to confer upon the legislature the power to give these officers authority to try the highest causes.

The PRESIDENT. The Chair must remind the gentleman that he cannot debate the amendment.

Mr. THOMPSON, of Charlestown. I desire to know if the motion is divisible, so that the question may first be taken upon the motion to strike out, and then upon the motion to insert?

The PRESIDENT. A motion to strike out and insert is not divisible.

The amendment was then adopted.

Mr. WESTON, of Duxbury, suggested that inasmuch as there seemed to be some prejudice against the word "trial," he thought some other word might be substituted; he therefore moved to strike out the word "trial," and insert the word "town," so that it would read "Town Justices," instead of "Trial Justices."

The amendment was not agreed to.

Mr. FROTHINGHAM, of Charlestown, moved to insert, after the word "and," in the third line of the first paragraph of the resolve, the words "may be," so as to make the clause read:—

There shall be one in each town, and may be one additional for every two thousand inhabitants.

The amendment was adopted.

Mr. LELAND, of Holliston, moved to amend by adding to the first resolve the following:—

*Provided*, that no Trial Justice shall act as such after his ceasing to reside in the town in which he was elected.

Mr. SCHOULER asked the gentleman from Holliston to substitute the following instead of his amendment: Insert after the word "inhabitants," the words "who shall have jurisdiction only in the towns in which they shall reside, and for which they shall be elected." So that the clause, if amended, would read:—

There shall be one in each town, and may be one additional for every two thousand inhabitants, who shall have jurisdiction only in the towns in which they reside and for which they shall be elected.

Mr. LELAND declined to accept the substitute, and the question being taken, the amendment was not adopted by the Convention.

Mr. MORTON, of Andover, moved to amend by striking out the words "each town," and to insert "every such town or city." The clause would then read:—

There shall be one for every such town or city,

and may be one additional for every two thousand inhabitants.

The motion was agreed to—ayes, 148; noes, 3.

On motion of Mr. TRAIN, of Framingham, the Convention reconsidered the vote by which the amendment of the gentleman from Holliston (Mr. Leland) was rejected.

The question then recurred upon the adoption of the amendment, which was read, as follows: Add, at the end of the first paragraph, the following:—

*Provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

The question was taken, and the amendment adopted.

Mr. LORD, of Salem, moved to amend by adding to the first section the following words:—

But no Trial Justice shall have jurisdiction in any civil action in which both of the parties shall be inhabitants of towns in the Commonwealth, other than the town in which such Justice was elected.

The amendment was not agreed to.

The question then recurred upon the amendment offered by Mr. Morton, of Andover, as amended, to strike out the first resolve reported by the Committee, and to insert the following:—

*Resolved*, That it is expedient to amend the Constitution, as follows:—

1. Trial Justices shall be elected by the legal voters of the several towns and cities where no police court is or shall be established by law, for a term of three years. There shall be one in every such town or city, and may be one additional for every two thousand inhabitants. They shall have the same jurisdiction, powers and duties, that are now exercised by Justices of the Peace, subject to alteration by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, shall be appointed by the Governor and Council, for a term of seven years; and those who now hold that office shall continue as such, according to the tenure of their respective commissions: *provided*, that the jurisdiction of such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts, in the several towns and cities in the Commonwealth, shall be elected by the several towns and cities, for a term of three years.

Mr. STEVENSON, of Boston. From the fact that this is a subject which only those acquainted with the law can thoroughly understand, I feel under the necessity of moving to recommit this subject to the Committee which reported it.

Mr. WESTON, of Duxbury. If the subject is to be recommitted, I hope it will be committed to a Select Committee, and not to the Committee which reported it.

Mr. STEVENSON. I will so modify my motion.

The question was taken, and the motion to commit was disagreed to—ayes, 97; noes, 119.

Mr. WHITNEY, of Boylston. After so much information upon this subject, I feel disposed to move, and I do now move, to postpone indefinitely the whole subject.

Mr. BIRD, of Walpole. I move the previous question.

Mr. HALLETT, for Wilbraham. I desire to know whether the motion for the previous question will extend to the second and third resolves?

The PRESIDENT. It will extend to all the resolves under consideration.

Mr. HALLETT. Well, Sir, I desire to say a word, to show why the main question should not be ordered. According to my understanding, if the previous question is sustained, it brings us to a direct vote upon this second resolve, which I do not hesitate to say is the most extraordinary proposition I ever heard proposed to be put into any Constitution. It gives to the governor power to turn every-body out of office in the Commonwealth. [A laugh.] I do not want to give the governor any such powers.

Mr. BIRD, of Walpole. At the time I made the motion, I supposed it applied only to the amendment of the gentleman from Andover, (Mr. Morton,) but if it is desirable to propose amendments to the other resolutions, and they cannot be separated, I will withdraw the demand for the previous question.

Mr. WHITNEY, of Boylston. I withdraw the demand for the indefinite postponement.

Mr. MILLER, of Wareham. I renew the motion.

Mr. HALLETT, for Wilbraham. I move to amend by striking out the second resolution. It is a resolution which gives the governor the power of removing every-body, without any cause whatever.

The PRESIDENT. The motion to amend must be first put, before the motion for indefinite postponement.

Mr. CHAPIN, of Worcester. I move to reconsider the vote by which the Convention re-

fused to recommit this subject to a Special Committee. The reason why I make the motion is this :——

The PRESIDENT. The question is not debatable.

Mr. MILLER. I desire to inqure of the Chair if my motion is not to be considered?

The PRESIDENT. The Chair would inform the gentleman that the pending question is a motion to amend, made by the gentleman for Wilbraham, which must be first put, before the motion for the indefinite postponement. A motion has been made by the gentleman from Worcester, to reconsider the vote by which the Convention refused to recommit the subject of the election of justices of the peace to a Special Committee, which motion the Chair decides to be in order at this time.

The question was taken upon Mr. Chapin's motion, and there were—ayes, 127 ; noes, 89.

The PRESIDENT. The question now is, upon the motion of the delegate from Boston, (Mr. Stevenson,) to recommit this whole subject to a Special Committee.

Mr. BOUTWELL, for Berlin. I move that the whole subject lie upon the table.

The question was taken, and there were—ayes, 94; noes, 140.

So the motion was not agreed to.

Mr. GRISWOLD, for Erving. I move to amend the motion of the gentleman from Boston, (Mr. Stevenson,) by adding that the Committee be instructed to report to-morrow morning.

Mr. STEVENSON. I accept the amendment.

The question was then taken upon the motion of Mr. Stevenson, and it was decided in the affirmative.

Mr. KEYES, for Abington, moved that the Committee consist of seven.

The motion was agreed to.

*Debates and Proceedings.*

The PRESIDENT. The next matter in the Orders, is the following resolve, reported by the Committee on Publishing the Proceedings and Debates of the Convention.

The resolve was read, as follows :—

*Resolved*, That the Committee appointed to superintend the publication of the reports of the Debates and Proceedings of this Convention, be authorized, in connection with the President and State Auditor, to allow the accounts for such service, and the Governor is hereby requested to draw his order on the treasury for the payment of the same.

The resolve was ordered to a second reading.

*Announcement of a Committee.*

The Chair announced as members of the Special Committee on the resolves concerning the election of justices of the peace, the following named gentlemen : Mr. Stevenson, of Boston; Mr. Butler, of Lowell; Mr. Chapin, of Worcester; Mr. Bartlett, of Boston; Mr. Dawes, of Adams; and Mr. Morton, of Andover.

Mr. STEVENSON moved that the Committee have leave to sit during the session of the Convention.

The motion was agreed to.

Mr. CHURCHILL, of Milton. I have a proposition with reference to the election of justices of the peace, which I ask permission to read to the Convention, and which I ask may be referred to the Committee just appointed.

The resolve was read and referred.

*Bill of Rights.*

On motion of Mr. BIRD, of Walpole, the Convention resolved itself into

COMMITTEE OF THE WHOLE.

Mr. Schouler, of Boston in the chair, upon the several resolves reported from the Committee on the subject of the Bill of Rights.

The resolves were read, as follows :—

1. *Resolved*, That the Bill of Rights be amended by adding to the eleventh article, as a part of the same, the following words :

"And every person having a claim against the Commonwealth, ought to have a judicial remedy therefor."

2. *Resolved*, That the Bill of Rights be amended by inserting between the 11th and 12th articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz. :—

"VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months."

3. *Resolved*, That the Bill of Rights be amended in the last sentence of the 29th article, by striking out the words "so long as they behave themselves well, and that they," and inserting, "by tenures established by the Constitution, and;" also, by striking out the words "ascertained and established by standing laws," and inserting, "which shall not be diminished during their continuance in office," so that the whole sentence, as amended, shall read as follows :—

"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 office by tenures established by the Constitution, and should have

honorable salaries, which shall not be diminished during their continuance in office."

4. *Resolved*, That the Bill of Rights be amended, by inserting between the 29th and 30th articles, the following additional article:—

"This enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature that are not granted in this Constitution."

Also the following Minority Reports:—

To amend as follows: And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion.

To add to the 15th article of Bill of Rights the following clause:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case.

Mr. SUMNER, for Marshfield. Mr. Chairman: As chairman of the Committee on the Preamble and Bill of Rights, it belongs to me to introduce and explain their Report. It will be perceived that it is brief, and proposes no important changes. But, in justice to the distinguished gentlemen with whom I had the honor of being associated on that Committee, I deem it my duty to suggest that the extent of their labors should not be judged by this result. It appears from the proceedings of the Convention of 1820, that the Committee on the Bill of Rights at that time, sat longer than any other Committee. I believe that the same Committee in the present Convention, might claim the same preëminence. Their records show twenty different sessions.

At these sessions, the Preamble and the Bill of Rights, in its thirty different propositions, were passed in review and considered, clause by clause; the various orders of the Convention, amounting to twelve in number; the petitions addressed to the Convention, and referred to the Committee; and also informal propositions from members of the Convention and others, were considered; some of them repeatedly and at length. On many questions there was a decided difference of opinion; and on a few, the Committee was nearly equally divided. But after the best consideration we could bestow upon them, in our protracted series of meetings, it was found that the few simple propositions, now on your table, were all upon which a majority of the Committee could be brought to unite. As such, I was directed to present them to the Convention. And here, Sir, admonished by the lapse of time, and the desire to close these proceedings, I might be content with this simple statement.

But, notwithstanding the urgency of our business, I cannot allow the opportunity to pass—indeed, I should not do my duty—without attempting, for a brief moment, to show the origin and character of this part of our Constitution. In this way we may learn its weight and authority, and appreciate the difficulty and delicacy of any change in its substance, or even its form. I will try not to abuse your patience.

The Preamble and Bill of Rights, like the rest of our Constitution, were from the pen of John Adams; among whose published works the whole document, in its original draught, may be found. At the time when he rendered this important service to his native Commonwealth, and to the principles of free institutions everywhere, he was forty-five years of age. But he was not unprepared. The natural maturity of his powers had been enriched by the well-ripened fruit of assiduous study, and of an active life, both of which concurred in him. The examples of Greece and Rome, and the writings of Sidney and Locke, were especially familiar to his mind. The common law he had made his own, and mastered well its whole arsenal of Freedom. For a long time the vigorous and unfailing partisan of the liberal cause in Boston, throughout its many conflicts; then in Congress, whither he was transferred, the irresistible champion of Independence; and then the republican representative of the united, but still struggling colonies, at the court of France; in the brief interval between his two foreign missions, only seven days after landing from his long ocean voyage, he was chosen a delegate to the Constitutional Convention, and at once brought all his varied experience, rare political culture, and eminent powers, to the task of adjusting the frame-work of government for Massachusetts. As his work, it all claims our regard; and no part bears the imprint of his mind so much as the Preamble and Bill of Rights; nor is any other part authenticated as coming so exclusively from him.

At the time of its first adoption, the Massachusetts Bill of Rights was more ample in its provisions, and more complete in form, than any similar Declaration in English or Colonial history. Glancing at its predecessors, we shall learn something of its sources. First came, long back in the thirteenth century, Magna Charta, with its genereous safeguards of Freedom, wrung from King John by the Barons at Runnymede. From time to time these liberties were confirmed, and, after an interval of centuries, they were again

ratified, at the beginning of the unhappy reign of Charles I., by a Parliamentary Declaration, to which the monarch assented, known as the Petition of Right, which, in its very title, reveals the humility with which the rights of the people were then maintained. And finally, in a different tone and language, at the Revolution of 1688, when James II. was driven from his dominions, a "Declaration of the true, ancient, and indubitable rights and liberties of the people of the kingdom," familiarly known as the Bill of Rights, was delivered by the Convention Parliament to the new sovereigns, William and Mary, and embodied in the Act of Settlement, by virtue of which they sat on the throne. These, Sir, are the English examples.

Their influence was not restrained to England. It crossed the ocean. From the beginning, the colonists were tenacious of the rights and liberties of Englishmen, and, at various times and in various forms, declared them. Connecticut, as early as 1639; Virginia in 1624, and 1676; Pennsylvania in 1682; New York in 1691;—and I might mention others still,—put forth Declarations, brief and meagre, but kindred to those of the mother country. In the colony of New Plymouth, the essential principles of Magna Charta were proclaimed in 1636, under the name of the General Fundamentals; and in 1672, the inhabitants of Massachusetts Bay declared in words worthy of careful study, that "the free fruition of such Liberties, Immunities, Privileges, as Humanity, Civility, and Christianity call for, as due to every man in his place and proportion, without impeachment and infringement, hath ever been and ever will be, the tranquillity and stability of Churches and Commonwealth, and the denial or deprival thereof, the disturbance, if not the ruin of both."

In the animated discussions, which immediately preceded the Revolution, the rights and liberties of Englishmen were constantly asserted as the birth-right of the colonists. This was often done by formal resolutions or declarations, couched at first in moderate phrase. At the outrage of the Stamp Act, a Congress of Delegates from nine States, held at New York, in October 1765, put forth a series of resolutions entitled, "*Declaration of our humble opinion* respecting the most essential rights and liberties of the colonists." The humility of this language may recall the English Petition of Right under Charles I. This was followed in 1774 by the Declaration of the Continental Congress, which, in another tone and with admirable force, arrays in ten different propositions, the rights which "by the immutable laws of nature, the principles of English liberty and the several charters of compacts" belong to "the inhabitants of the English colonies in North America."

Time's noblest offspring is the last;

and the whole colonial series was aptly closed by the Declaration of Independence, which declared not merely the rights of Englishmen, but the rights of men.

But only a few brief weeks before the Declaration of Independence, Virginia, taking the lead of her sister colonies, had established a Constitution to which was prefixed an elaborate Bill of Rights. This remarkable document, which has been the grand precedent for the whole country, marks an epoch in political history. In all English Declarations of Rights and even in those of the colonies, unless we except the early declaration of the inhabitants of Massachusetts Bay, stress had been laid upon the liberties and privileges of Englishmen. The rights claimed even by the Continental Congress of 1774, in their masculine Declaration, were the rights of "free and natural-born subjects within the realm of England." But the Virginia Bill of Rights, standing at the front of its first Constitution, discarded all narrow title from mere English precedent, planted itself on the eternal law of God, above every human ordinance, and openly proclaimed that "all men are equally free and independent;" a declaration, which is repeated, though in other language, by the Massachusetts Bill of Rights.

The policy of Bills of Rights has been sometimes called in question. It has been said that they were originally privileges or concessions extorted from the king, and, though expedient in a monarchy, are of little value in a republic. As late as 1821, in the Convention for revising the Constitution of New York, doubts of their utility were openly expressed by Mr. Van Buren. But they are now above question. Each new State, ending with California, follows the example of Virginia and Massachusetts, and places its Bill of Rights in the front of its Constitution. Nor can I doubt that much good is done by this frank assertion of fundamental principles. The public mind is instructed; people learn to know their rights; liberal institutions are confirmed; and the Constitution is made stable in the hearts of the community. The provisions in the Bill of Rights are lessons of political wisdom and anchors of liberty. They are also the constant index and scourge of injustice and wrong. In Massachusetts, slavery itself disappeared before the declaration that "all men are free and equal," interpreted by a liberty-loving court.

In the Convention of 1780, the Bill of Rights

formed a prominent subject of interest. The necessity of such a safeguard had been pressed upon the people, and its absence from the Constitution of 1777 was unquestionably a reason for the rejection of that ill-fated effort. Indeed, this Constitution was openly opposed because it had no Bill of Rights. In the array of objections to it at the period was the following, which I take from an important contemporaneous publication: "That a Bill of Rights, clearly ascertaining and defining the rights of conscience, and that security of person and property which every member of the State hath a right to expect from the supreme power thereof, ought to be settled and established, previous to the ratification of any Constitution for the State." Accordingly at the earliest moment——

[Here the hammer of the Chairman fell, and Mr. Sumner took his seat.]

Mr. WILSON, of Natick. I move that the gentleman for Marshfield have leave to proceed.

Mr. LORD, of Salem. I rise to a question of order: whether it is competent for this Committee to change a rule made in the Convention?

Mr. WILSON. The rule of the Convention is, that a person shall not speak more than fifteen minutes, without leave is granted. I take it that it is competent for this Committee to grant leave.

The CHAIRMAN, Mr. Schouler in the chair. The gentleman from Natick moves that the gentleman for Marshfield have leave to proceed; and the Chair is of opinion that it is competent for the Committee to grant that leave.

Mr. BOUTWELL, for Berlin. It seems to me that the decision has been otherwise, and that the rule of the Convention has been interpreted to be in the nature of an instruction to the Committee, like instructions to any other body.

The CHAIRMAN. The Chair will read the rule:—

"*Ordered*, that on and after Monday next, no member shall speak more than fifteen minutes, on any one subject, without leave."

The Chair is of opinion that the rule is applicable in Committee and that the Committee have a right to change the rule.

Mr. BRIGGS, of Pittsfield. I apprehend we cannot change the rule; but the question is, whether the Committee have the right to grant leave. It struck me that they had not the right, but I think that if the rule is applicable to the Committee we have the right to grant leave.

Mr. HALLETT. Leave may be granted by universal consent, but not otherwise.

The Chairman again read the rule, and stated it as his opinion that leave might be granted by a majority of the Committee.

Mr. ASPINWALL, of Brookline. I think it important that the rule should be decided properly. Whatever the ruling of the Chair may be, I suppose the Committee cannot decide upon an order. That point of order having been raised, it must go into the Convention for a decision.

The CHAIRMAN. Does the gentleman make any motion?

Mr. ASPINWALL. I will make no motion.

Mr. WILSON. I think that either in Convention or in Committee, when the fifteen minutes have expired and the Chairman announces the fact, the gentleman who is speaking cannot go on. His time is out under the rule. But it is competent for any member of the Convention to move that he may have leave to proceed, and it is competent for the Committee to grant leave. I think that is in accordance with the terms of the resolution, and if I were in the chair I should put the question to the Committee.

Mr. LORD. If the motion of the gentleman from Natick is entertained, then I move to amend it so as to add after the words "delegate for Marshfield," the words, "and any other gentlemen who please to address the Committee on this subject, may be allowed to proceed, notwithstanding the fifteen minutes' rule." That is the same motion I made to-day, and at that time I gave this very case as an illustration. I knew the Committee wanted to hear the chairman of the Committee on the Bill of Rights; I wanted to hear him; I am most anxious to hear him; but I am not disposed to see this invidious distinction made between one side and the other. I have therefore made the motion.

Mr. BRIGGS. I said before, when the question was first propounded, that I thought we had not power to grant leave. The fifty-first rule of the Convention is this:—

"The rules of proceeding in the Convention shall be observed in a Committee of the Whole, so far as they may be applicable, except the rule limiting the time of speaking."

Now, Sir, the rule which you read, applies to the Convention, and does not name the Committee; but this fifty-first rule of the Convention makes it apply to the Committee, so far as it is applicable. Now, on this precise subject, there is as much reason for it here as in Convention. It is applicable by the force of this fifty-first rule. In Convention, when the fifteen minutes have expired, it is in order to move that the gentleman speaking may have leave to proceed. I apprehend, then, that this motion, taken in connection with the fifty-first rule, is strictly in order.

The CHAIRMAN. The Chair would state that he considers this rule, adopted in Convention, as applicable to the Committee, and that the general ruling and practice has been, that each case shall be decided upon its own merits, when it comes up; and therefore the Chair rules that the amendment proposed by the gentleman from Salem, is not in order.

Mr. HALLETT. The motion, as I understand, is for leave to proceed. Now, Sir, no gentleman desires, more than I do, to hear the gentleman for Marshfield; because, as he knows, I have so kind feelings against him. [Laughter.] I meant to say, kind feelings for him; but on one subject my feelings are against him; but they are kind, though strong. We have made a rule to limit debate. We discussed the matter in Convention whether we ought not to except the chairman of a Committee from its application, and we found there would be an injustice in that, which was not suitable, because it was saying that a majority should have more time than a minority. Therefore, it stands as a rule, and for that reason I hope we shall adhere to it, and especially in this particular case. If we adhere to it now, we shall find it more easy to apply it to others. If we apply the rule now, we shall show that we are disposed to carry this Convention through, this week; and I tell gentlemen who have eloquent speeches to make, and itching ears to listen to them, that if we allow this rule to be neglected now, we shall not get through till another week. If this rule is passed over, I pledge myself I will make no more effort to get the Convention through this week.

Mr. DANA, for Manchester. There is a distinction between this order and other orders. All other orders declare that no person shall speak beyond a particular time, without a suspension of the rules, or general consent; but this order which we are now acting under, differs from all others, and, I supposed, intentionally, so that no person shall speak without obtaining leave, and so that a majority may grant leave. But under all the other orders, there was required either a suspension of the rules, or unanimous consent. But as this was a special and peculiar order, I suppose the power to grant leave must be in the body itself.

Mr. BIRD, of Walpole. I hope the rule will be enforced. I do not like to say it, in relation to the gentleman for Marshfield, but I think the rule is important, and if we yield in this case, we must yield in all cases; and it will cost us some two or three thousand dollars if we suspend this rule now, by prolonging this Convention.

Now I wish to say, with all respect to the Committee on the Bill of Rights, that if they had reported two or three weeks ago, they would have had the subject before us, and might have had it fully presented. I do not wish to say anything to injure the feelings of the gentleman, or of any member of the Committee; but if they had reported six weeks ago, they might have had an opportunity to get the subject up before.

Mr. GARDNER, of Seekonk. If the gentleman had had leave to proceed, he would have been through before this time; and I move that the rule of the Convention be suspended, and that the gentleman have leave to proceed and finish his remarks.

The CHAIRMAN. The motion before the Committee, is that made by the gentleman from Natick, and the Chair will state that he considers this rule as in the nature of an order, so that it will not require two-thirds to rescind it, but only a majority.

The question was then taken on granting leave, and on a division, there were—ayes, 92; noes, 87.

So the motion was decided in the affirmative.

Mr. BOUTWELL. I move a reconsideration of the vote just taken.

Mr. BRIGGS. I would inquire if a Committee can reconsider?

The CHAIRMAN. The Chair thinks that the motion of the gentleman for Berlin may be entertained.

Mr. BOUTWELL. I make this motion with great reluctance, but I feel it to be most important, for, upon the decision of this question, depends the fate of this Convention. I am sure of that. If the Committee or the Convention shall decide that the gentleman may proceed, I cannot vote against allowing any other gentleman to proceed; and upon that I must stand, for one, whether this Convention sit till the first of August, or the first of September, or the first of October. That is a reason why I am unwilling that a majority, at this crisis in the history of this Convention, shall say whether it shall be indefinitely prolonged or not. I know the gentleman for Marshfield will relieve me from the thought of desiring to do anything displeasing to him, personally, or injurious to his feelings.

Mr. SUMNER, for Marshfield. I am unwilling to seem, even for a moment, to retard the business of this Convention, which, from the beginning, I have sought to speed, and which, I rejoice to believe, I have not perplexed by much speaking. But the rule limiting debate has been heretofore relaxed in favor of the chairmen of Committees, when introducing their Reports, and I regarded this exception as so entirely reasonable, that I did not hesitate to count upon it. The

Committee on the Bill of Rights is one of the most important of this Convention. After twenty different sessions, it has only recently brought its labors to a close, and now its Report is presented for your consideration. It has been charged with delay. Sir, it is not obnoxious to any such charge, and I desired to show that it is not. It was my hope, also, in a simple way, to explain the origin and character of a part of our Constitution—which, at the time of its formation, was regarded as second to none other in importance—that the Convention might appreciate the delicacy with which the Committee had acted, and might judge, then, not merely by what they had done, but by what they had forborne to do, in the way of propositions of amendment. This I owed to my associates on the Committee, and also to the Convention, who had a right to expect an account of our labors. Had I taken the floor merely as a member of the Convention, in the ordinary course of debate, I should have yielded at once to the slightest intimation from any quarter; but I was encouraged by others to feel that, in presenting the Report of a Committee like that on the Bill of Rights, it hardly became me to take counsel of the feelings of reserve which would have controlled me as an individual. But, Sir, this matter must now end. After what has passed, I cannot consent to proceed.

Mr. HOPKINSON, of Boston. It seems to me that there is a peculiar impropriety in enforcing the rule in this case, not only in reference to the gentleman who has just taken his seat, but with reference to the subject which that Committee have acted upon—I might properly say subjects, for we have had before us at least half a dozen subjects, and any deliberative assembly, if they should attempt to decide upon them on a full discussion of their merits, would have given to each of them more than one day. It is impossible to do justice to any one of half a dozen matters now before the Committee, without more discussion than the rule will admit. If the rule is to be insisted upon, I will inquire whether it will be in order to move to take up one of these subjects at a time? They are large and comprehensive subjects, embracing great principles, and should be settled upon their merits. If it would be in order to take up one of these subjects at a time, we should still find that the rule was stringent enough for all useful purposes.

The CHAIRMAN. All these matters were referred to the Committee, and it is in the power of the Committee to decide in what way they shall be discussed. If the Committee should so decide, one would be taken up first. The question immediately before the Committee is the motion to reconsider the vote whereby the gentleman for Marshfield was allowed to proceed.

Mr. GARDNER, of Seekonk. There is probably no person in this Convention more anxious than I am to bring its labors to a close. I am very desirous indeed that all our business should be completed, and that we may adjourn before Saturday next; but I have listened with great interest to the remarks of the gentleman for Marshfield, and I have heard no speech in the course of the session which I thought was so important as the speech made by that gentleman; and I am very anxious that he should be allowed to proceed. We might make this one exception, and if gentlemen wish that the labors of this Convention should be brought to a close, I will guarantee that they can be closed during the present week. We can save the time between now and to-morrow on the discussion of some other question. On many occasions I have desired to speak, not thirty minutes, as the gentleman from Boston suggested, for if I could have had the floor fifteen minutes, I should have been satisfied; but other gentlemen who wished to speak, and who have not used so much of the power of concentration, have occupied the time, and I have myself refrained, being a modest man. [Laughter.] I have refrained; and it is with a great deal of diffidence that I say this. [Renewed laughter.] Now, Sir, I do not wish to have the Convention consume any more time in the discussion of this subject. I hope the gentleman for Berlin will not press his motion to reconsider this vote, but allow the gentleman for Marshfield to go on and finish his eloquent speech; and that after this the rule will be enforced. I do not see any objection to making this exception to the general rule; for it is said that there is no rule without an exception; and if ever there were any good reasons for making an exception, it seems to me that there are in this case. I hope, therefore, that the gentleman for Marshfield will be allowed to go on and finish his speech, even if we are obliged to take tea a little later than the usual hour, in consequence.

The question being then taken on the motion to reconsider, on a division there were—ayes, 84; noes, 82—so the motion was agreed to.

The question then recurred on the motion that Mr. Sumner be allowed to proceed; when Mr. Wilson withdrew the motion.

The question was then stated on the adoption of the Report of the majority of the Committee.

Mr. HALLETT. I desire to inquire if the motion was put that these subjects be taken up

separately? I understood the gentleman from Boston to make such a suggestion.

The CHAIRMAN. That was suggested by the gentleman from Boston, but a motion was not in order at that time.

Mr. HALLETT. I desire, then, to make the motion—if indeed I have not a right to call for a division—that each branch of the subject be considered separately. In that way I suppose the gentleman for Marshfield could be entitled to fifteen minutes upon each resolution and each amendment proposed, and he would thus have an opportunity to express his views, in discussing the whole subject indirectly.

Mr. HOPKINSON. I will inquire whether the adoption of the motion of my friend for Wilbraham would open the whole question, so that upon the various portions of the Report fifteen minutes could be taken by each speaker? If so, we are opening a very wide field for debate; and it may occupy not merely one or two days, but a whole week to dispose of the whole matter. I should like to have the decision of the Chair whether the adoption of the motion will open the whole question for discussion or each separate branch of it?

The CHAIRMAN. As all these matters were referred to the Committee together, the Chair is of the opinion that it is but one subject, and that any gentleman who wished to speak, will be allowed only fifteen minutes by the rule, upon all of them.

The question being then taken on the motion of Mr. Hallett, it was not agreed to.

Mr. BRIGGS. I understand, Mr. Chairman, that it is the right of any member to call for a division of any question, where it is susceptible of division; and therefore, although we take up the whole Report as one subject, each proposition may be considered separately. I think if the Chair will turn his attention to it, he will find that this has been the rule of proceeding in all cases heretofore.

The CHAIRMAN. The Chair will entertain any motion that is proposed, for a division of the question.

Mr. SUMNER, for Marshfield. I think that the business would be expedited by taking up each question by itself; and I believe that the rules and orders would indicate that course. I concur entirely in the remark of my friend from Pittsfield, and I hope we shall take up the first proposition in the Report of the majority of the Committee, and consider that as open to amendment; and when that shall have been disposed of, that we shall proceed to take up the next, and the next, until we dispose of the four propositions in the Majority Report; and that we shall then take up the Minority Report and proceed in the same way.

The CHAIRMAN. The Chair will state that the course mentioned by the gentleman from Pittsfield, is that which the Chair will adopt, unless the Committee shall otherwise direct. The question will be first, on the adoption of the first resolve reported by the majority of the Committee, which will be read by the Secretary.

The resolve was accordingly read, as follows:—

1. *Resolved*, That the Bill of Rights be amended by adding to the eleventh article, as part of the same, the following words:—

"And every person having a claim against the Commonwealth, ought to have a judicial remedy therefor."

The question being taken, the resolve was agreed to.

The question was then stated on the adoption of the second resolve, which was read as follows:

2. *Resolved*, That the Bill of Rights be amended by inserting, between the 11th and 12th articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz.:—

"VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months."

Mr. DANA, for Manchester. The Convention will perceive that this article has always been in the Constitution, and it is only proposed to transfer it from one place to another. I now offer an amendment, to add to the article the following words:—

Said writ shall be granted as of right in all cases where the legislature shall not specially confer a discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ.

I will state the reasons why I propose this amendment; and I suppose I ought to state that when it was considered in Committee, I failed to obtain a majority in favor of it. The Constitution says that the privilege and benefit of *habeas corpus* shall be obtained and enjoyed in the most free, easy, cheap, expeditious, and ample manner; but in my experience, I have found it the least free, easy, cheap, expeditious, and ample remedy, which we have. It is the most difficult writ to obtain in Massachusetts. Any man can come to

my office, and obtain a writ by which I can attach all the property of any citizen in Massachusetts; by which I can, with an affidavit, arrest the person of any man in Massachusetts, and make him obtain bail to the amount of $100,000. But the writ of *habeas corpus* is the most difficult to obtain in the whole calendar of writs. This arises from certain circumstances. In England, the writ of *habeas corpus* is, like all other writs, issued at the discretion of the courts; at least such has been the decision of the courts of England, and such has been the practice.

In the Revised Statutes of the Commonwealth, I find the following provisions in regard to this writ:—

"SEC. 1. Every person imprisoned in any common jail, or otherwise restrained of his liberty, by any officer or other person, except in the cases mentioned in the following section, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

"SEC. 2. The following persons shall not be entitled, as of right, to demand and prosecute the said writ:—

"*First.* Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, when the cause is plainly and specially expressed in the warrant of commitment.

"*Secondly.* Persons convicted, or in execution upon legal process, civil or criminal.

"*Thirdly.* Persons committed on *mesne process*, in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

"SEC. 3. Application for such writ, shall be made to the court or magistrate authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in his behalf, setting forth

"*First.* The person by whom, and the place where, the party is imprisoned or restrained, naming the prisoner and the person detaining him, if their names are known, and describing them if they are not known.

"*Secondly.* The cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying.

"*Thirdly.* If the imprisonment or restraint is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made; and

"*Fourthly.* The facts set forth in the complaint, shall be verified by the oath of the person making the application, or by that of some other credible witness; which oath may be administered by the court or magistrate to whom the application is made, or by any justice of the peace.

"SEC. 4. The court or magistrate to whom such complaint shall be made, shall, without delay, award and issue a writ of *habeas corpus*, which shall be, substantially, in the form heretofore established and used in this State, except in the cases provided for in the following section; and shall, in all cases, be made returnable forthwith, either before the supreme judicial court, or before any one of the justices thereof, and at such place as shall be designated in the writ."

Now, the difficulty is, that our courts, notwithstanding the language of the Revised Statutes, have taken upon themselves discretion in every case, and issue the writ of *habeas corpus* only where they see fit. Every person restrained of his liberty—with the exceptions specified—may prosecute a writ of *habeas corpus* to obtain relief. "The following persons shall not be entitled as of right to demand and prosecute said writ." Then follows a list of four classes of persons who are excepted—persons confined for treason, felony, &c.; and then the statute goes on and says that application shall be made to the court in a certain manner, and the court before which the application is made "*shall* issue the writ without delay." But, following the practice of the English courts, and in apparent ignorance or disregard of our statute, our courts have taken discretion in all cases; and in very many instances in which the writ may be demanded as a matter of right, it is refused. I do not mean to cast any imputation upon our courts for this, but merely wish to have the matter definitely stated in our Bill of Rights, so that there may be no doubt or difficulty in regard to it hereafter. Our courts have taken upon them the right to exercise a discretion as to whether a writ shall be granted upon a petition presented. The court undertake to say that if, upon an examination of the petition, the writ would not be of benefit to the party, they would not issue it. Now, I understand that the principle of the writ of *habeas corpus* is, that the case shall be decided upon the return of the writ. The writ itself decides nothing. It only brings the parties into court; but the question whether or not the party is to be liberated, is to be decided upon the return of the writ. Now, our legislature has said distinctly that in one class of cases the writ shall be granted as a matter of right, without discretion; that in another class of cases there shall be a discretion; that is, when a person is accused of treason or felony, or where he is held to bail in civil actions. But, as I have already remarked, our courts have held that they have discretion in all cases, and undertake to say, in the outset, whether the writ should issue or not. That seems to me to be a violation of a fundamental principle, and I desire to have a provision of this kind put into the Constitution,

so that it shall be beyond all doubt that the writ of *habeas corpus* shall be a writ of right. I do not mean to say that the writ should be a writ of right in all cases, but that there should be some exceptions; and therefore I have suggested that it should be so in all cases except where the legislature specially invests the court with a discretion. I have also provided that the legislature may prescribe the form of the oath, and other matters; but that where they do not specify a discretion, and all the forms shall have been complied with, the writ shall be granted as a matter of right. I will not detain the Convention farther than to express my hope that the amendment may be adopted.

Mr. HALLETT, for Wilbraham. If I understand the gentleman for Manchester, his object is to have the court compelled to grant the writ of *habeas corpus*, in a case where it is perfectly plain to the court that the writ should not issue; that is, if a person is held in legal custody, and the evidence of it is brought before the court, and the effect of the examination under the writ would simply be to remand him back again to jail, the court is, nevertheless, to grant the writ of *habeas corpus*. Now it seems to me, that that is utterly useless; because the court which grants the writ, has a right to determine whether the writ shall have effect, or not; and if the court is perfectly satisfied beforehand, that the writ will be of no avail to the party, what is the use of issuing it? What possible use is there in dragging a person into a court-room simply for the purpose of having him sent back again to jail? The legislature has provided for this, in regard to every possible occasion on which a man may be confined contrary to law, where it becomes a writ of right, because the only exceptions are in cases where the party is held under some legal process. Now if a party is held under a legal process, should the writ of *habeas corpus* be allowed to issue on the petition of any person who chooses to make the application, and who may be prepared with a force to rescue a prisoner? If a man is in jail for robbery, or murder, or any other offence, and application is made for this writ, the only object that I can see, would be a rescue. The third section of the statute which the gentleman quoted, provides that

"If the imprisonment, or restraint, is by virtue of any warrant, or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused."

So that any judge to whom a petition may be presented for a writ of *habeas corpus* sees the warrant, and thereupon he determines whether that is a sufficient warrant to hold the party, and determines whether the writ should be issued. It seems to me, that if any discretion should be given to a court at all, it is precisely in a case of this sort. I can see innumerable difficulties that would grow out of this amendment, if adopted; more than I have time now to enumerate.

Mr. DANA. One word in reply to the gentleman for Wilbraham. If he will notice my amendment, he will see that I do not say that the court shall grant the writ of *habeas corpus* in all cases. I say that where the legislature has not specifically given the judges a right of discretion, that then the writ may be demanded as a matter of right. Now, if the legislature says that the court shall exercise a discretion whenever a party is imprisoned for treason, or felony, or whenever a party is imprisoned on execution, or *mesne process;* in all these cases, a person will not be entitled as of right. And if the legislature should go a step farther, and describe any other class of cases, and say that in regard to them the court should have a discretion, as a matter of course, the court would exercise it. But in that class of cases in which the legislature thinks they ought not to have a discretion, where they think that the exercise of discretion and delay incident to it, might end in the ruin of the party praying for the writ, in such cases the court must grant the writ, and the gentleman for Wilbraham, (Mr. Hallett,) need be under no alarm; for the granting of the writ does not liberate the party, but merely brings him into court. Now there are many cases in which inconceivable injury may be done by refusing to grant a writ. A party may be carried off beyond your jurisdiction, and thus be left utterly without remedy, while the court is deciding the question on the petition.

In such case, unless you can have your writ immediately, you will be too late. If you are to file your petition, and to give notice to the opposite party, and go through sundry other forms, by which delay is caused, there are many instances in which your case would be beyond all redress. Let the legislature, therefore, say that the courts shall have discretion in certain cases where the public welfare requires it; and let them leave other classes of cases open, and the courts be obliged, as they now are, to issue the writ. The Revised Statutes are right enough now, as I understand them, upon this subject; but the difficulty is, that the courts have so construed them as to make them powerless. My object is to have a plain provision in the Constitution, so that while the discretion of the judges may be exercised in cer-

tain cases, controllable by the legislature, there shall be a general right to demand, and have the benefit of this writ, as of right.

Mr. HALLETT. I do not think the gentleman for Manchester states the matter exactly as it stands. If I understand it, his proposition is a direct proposition to enable persons on petition, to take out of the hands of judicial and ministerial officers, persons who are held there by legal process. Now, I contend that that cannot be done without creating conflicts in jurisdiction, and conflicts of officials, and endless troubles that will arise. As it is now, your courts have discretion. Does anybody suppose that the supreme court of Massachusetts would not issue a writ of *habeas corpus* in a case where a matter of right was concerned, and only a possible case was made out? Nobody can suppose it. I trust, therefore, that we will not disturb this matter, because nothing can be plainer than the law, and the construction of the courts as they now stand; and if you attempt to change them, it seems to me that you at once embark upon a sea of trouble.

The question was taken on the amendment, and a division being demanded, there were—ayes, 85; noes, 22.

So the amendment was adopted.

The question then recurring on the resolution as amended, it was adopted.

The next question was upon the third resolution, as follows:—

*Resolved*, That the Bill of Rights be amended in the last sentence of the 29th article, by striking out the words "so long as they behave themselves well, and that they," and inserting, "by tenures established by the Constitution, and"; also, by striking out the words "ascertained and established by standing laws," and inserting, "which shall not be diminished during their continuance in office," so that the whole sentence, as amended, shall read as follows:—

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 office by tenures established by the Constitution, and should have honorable salaries, which shall not be diminished during their continuance in office.

The resolution was agreed to.

The next resolve was then read, as follows:—

4. *Resolved*, That the Bill of Rights be amended, by inserting between the 29th and 30th articles, the following additional article:—

This enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature, that are not granted in this Constitution.

Mr. HALLETT, for Wilbraham. I would inquire if the Chair has the original bill before him, as reported by the Committee, as my understanding of the article was, that the word "expressly" should come in before the word "granted." In the printed copy that word appears to be left out.

The CHAIRMAN. The Chair would inform the gentleman that he read the article from the original bill, as reported by the Committee.

Mr. HALLETT. Then I move to insert the word "expressly," after the words "are not;" so that the latter part of the article shall read, "and no powers shall ever be assumed by the legislature, that are not expressly granted in this Constitution."

Mr. SUMNER, for Marshfield. I do not understand that the resolution passed the Committee, in the shape in which it is proposed to be amended by the gentleman for Wilbraham. The resolution as it came from the Committee, was in a different form. It was—"this enumeration of rights shall not impair others retained by the people, and no powers shall ever be assumed by the legislature, that are not granted in this Constitution." And now it is proposed, as I understand, by the gentleman for Wilbraham, to insert the word "expressly" before the word "granted," and I understand him, farther, to suggest that it passed the Committee in that form.

Mr. HALLETT. What I said, was, that I, and other gentlemen of the Committee, so understood it. That was my express understanding of it; but in being copied from the book of minutes it became altered, and the word "expressly" omitted. I am very sure it was meant to be there.

Mr. SUMNER. The Report was made up from the records of the Committee. My impression is, that the matter was discussed in the Committee whether the word "expressly" should be inserted, and a large majority were inclined against it; and, it seems to me, this Convention would make a mistake if they now undertake to go so far as to say that the legislature shall have no powers that are not *expressly* granted in this Constitution. There must be implied powers connected with legislation, and with every legislative body.

Mr. LORD, of Salem. I do not exactly understand the gentleman for Wilbraham, as to his amendment, whether it is meant as a side cut to Hoosac, because if the legislature cannot grant any authority whatever, except such as are expressly granted by the Constitution, we must put into the Constitution a word in favor of Hoosac, or it will not go. [Laughter.]

Mr. HALLETT. The phraseology of this reso-

lution is, that "the legislature shall assume no powers." Now, if this Convention mean anything by this resolution that "the legislature shall assume no powers that are not granted by this Constitution," they mean powers that shall be *expressly* granted, like the terms "public good" and "general welfare." That power is expressly granted. The implication under that power is a different proposition. The legislature are not at all limited in relation to powers granted in the Constitution, but they are limited expressly to powers granted. If you say "powers granted in this Constitution," why then you assume still other things, a higher, or a general power, which may be there without being exactly granted by the Constitution. If I understand anything of republican doctrine, it is opposed to all implied powers. We go for express powers. I do not say that the legislature shall do no act not expressly granted in the Constitution, but the amendment of the Committee is, that the legislature shall exercise no power not granted, and my amendment proposes to say "not expressly granted."

Mr. LORD, of Salem. I desire to ask the gentleman for Wilbraham, whether he means that the words "general welfare" is an express delegation of any power which the legislature chooses to consider as being exerted for the general welfare?

Mr. HALLETT. It is an express grant of a general power, and the power goes just as far as expressed in that grant.

Mr. LORD. And just as far as the legislature chooses to consider that it goes, under the phrase "general welfare"?

Mr. HALLETT. No, Sir; that is a different question. That is a state to which the gentleman desires to get—to have a legislature with all powers—an omnipotent legislature. I do not think the people of this Commonwealth desire to have it so understood; and therefore I want to put this beyond the possibility of a question. If you mean anything by the phrase "not granted in this Constitution" you mean "not expressly granted." And what does that mean? Why, that which is not expressed in the Constitution.

Mr. WILSON, of Natick. It seems to me that this whole resolution, which is proposed to be put into the Constitution, is of very little value indeed, and of little importance. And now the gentleman for Wilbraham, (Mr. Hallett,) proposes to amend even this, which I take to be of very little value; for the legislature, under the provisions of the Constitution, which authorizes them to do such things as will promote the general welfare, and under other general terms, can do very many things, and I do not believe that it is of the slightest consequence to put this resolution into the Constitution. But, nevertheless, I am willing to assent to its insertion into the organic law, but not with the word "expressly" in it. I think if that is inserted, we shall have trouble enough in the future to carry on the government of the State. I see no necessity for the amendment, and I hope the Convention will not indorse it.

Mr. BRADFORD, of Essex. I call for a division of the question.

Mr. SUMNER. The question is upon adopting the word "expressly."

Mr. BRADFORD. I ask for a division of the question when it is taken upon the resolution, and move that the question upon the latter clause of the resolve be taken by yeas and nays.

The CHAIRMAN. The motion is not strictly in order now, as the question pending is upon the motion to amend, made by the gentleman for Wilbraham.

Mr. HALLETT. I will relieve gentlemen from the trouble of voting upon my amendment. There is but little of strict construction in this Convention, and I am very apprehensive that we shall have a "general welfare" clause put in stronger than it is in the old Constitution, and I fear that we may lose what there is there, by gentlemen whom I thought were inclined to hold the legislature to some powers, and to make a power of attorney for them, by which we should give them to understand what we mean shall be their duties. But I see that the purpose is to make a Constitution, and then let the legislature do as they please. To avoid the possibility of such a result, and being very desirous to have some restriction upon the powers of the legislature, I withdraw the amendment, hoping thereby to be able to save the rest.

Mr. NEWMAN, of Bolton. I believe I cannot vote for the proposition reported by the Committee, without some explanation. It appears to me that the resolve is entirely useless, as was remarked by the gentleman from Natick, (Mr. Wilson). The fourth article of section first, of chapter first, of the Constitution, it appears to me, confers general powers upon the legislature. It not only gives general powers, but it makes the government one not of special rights, but of general powers entirely. The end accomplished by the resolve appears to me to be useless, unless we alter the phraseology of the fourth article.

I move to amend by striking out the words—"This enumeration of rights shall not impair others retained by the people; and no powers shall ever be assumed by the legislature that are

not granted in this Constitution," and insert in lieu thereof the words: "We declare that everything in this Bill of Rights is excepted out of the general powers of the government, and shall forever remain inviolate," so that the resolve shall read:—

4. *Resolved*, That the Bill of Rights be amended, by inserting between the twenty-ninth and thirtieth articles the following additional article:—

We declare, that everything in this Bill of Rights is excepted out of the general powers of the government, and shall forever remain inviolate.

The question was then taken upon the amendment of the gentleman from Bolton, (Mr. Newman,) and it was decided in the negative.

So the amendment was not agreed to.

The question then recurring upon the adoption of the resolve as reported by the Committee,

Mr. BRADFORD, of Essex, renewed his call for a division of the question.

The question was accordingly first taken upon the first clause of the resolution, viz.: "This enumeration of rights shall not impair others retained by the people," and was decided in the affirmative; and then the question upon the second clause, viz.: "and no powers shall ever be assumed by the legislature, that are not granted in this Constitution," and it was decided in the affirmative.

So the resolution as reported by the Committee, was adopted.

Mr. WILSON, of Natick. Here is a series of resolutions reported in different documents of the Convention, all from the Committee on the Bill of Rights. Cannot the Committee rise and report these resolves to the Convention, and have them acted upon, and ask leave to sit again upon the other propositions?

The CHAIRMAN. The Chair thinks that might be done.

Mr. WILSON. Then I make the motion that the Committee rise and report these resolves as amended, to the Convention, with a recommendation that they do pass, and ask leave to sit again upon the other resolutions which have not been acted upon.

The question was taken, and the motion was agreed to.

The Committee accordingly rose, and

IN CONVENTION,

The chairman of the Committee of the Whole, Mr. Schouler, reported that the Committee had had under consideration resolves relating to the Bill of Rights, and had instructed him to report the same to the Convention, with an amendment, with a recommendation that they do pass, and to ask leave to sit again upon other resolves not yet acted upon.

Leave was granted to sit again.

The question first being upon agreeing to the amendment to the second resolve, as reported from the Committee of the Whole, it was put and decided in the affirmative.

So the amendment was agreed to.

The question being then upon the adoption of the resolves as amended,

Mr. LORD, of Salem, said: I suppose it is desirable upon so important a subject as the Bill of Rights, to have the question taken separately upon each resolve.

The PRESIDENT. The Chair would suggest that there is another stage in the passage of the resolves.

Mr. LORD. There is the difficulty. There is a first stage, and there we are not allowed to debate, and when we arrive at the second stage, they won't let us debate, because there was a first stage

The PRESIDENT. Does the gentleman ask for a division of the resolution?

Mr. LORD. I move that the farther consideration of these resolves, be assigned for to-morrow morning, at ten o'clock.

Mr. HALLETT. I second that motion.

The question was taken, and the motion was agreed to.

*Justices of the Peace.*

Mr. STEVENSON, of Boston, from the Special Committee to whom was referred the resolves in relation to justices of the peace, reported back the resolves and amendments in a new draft, as follows:—

*Resolved*, That it is expedient to amend the Constitution so as to provide that

1. Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such Justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers and duties, as are now exercised by Justices of the Peace, which jurisdiction, powers and duties, may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *pro-*

*vided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof, for a term of three years.

4. In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose election is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

Mr. STEVENSON moved that the resolves be laid upon the table, and printed.

The motion was agreed to.

On motion of Mr. BREED, of Lynn, at six o'clock forty-five minutes, the Convention adjourned.

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TUESDAY, July 26, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President *pro tempore*, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

*Distribution of Books.*

Mr. MIXTER, of New Braintree, introduced the following order:—

*Ordered*, that the Clerk of each of the towns in this Commonwealth that have not sent a delegate to this Convention, shall receive, for the use of the town, one copy of the Constitutions of the United States, and one copy of the Debates of the Massachusetts Convention of 1820.

Mr. MIXTER. I introduced this order, Sir, at the recommendation of some of the towns which are not represented in this Convention. It will be seen that those towns which are represented, will be provided for through their delegates; but those which are unrepresented, do not possess the same facility for obtaining copies of these Constitutions. I consider that they are valuable to each one of the inhabitants of every town, and particularly so as books of reference. There are many towns, as is well known, which, though not through any neglect of theirs, are not represented in this Convention. These towns, I think, are as much entitled to these books as any other towns are; and for these reasons, and at their request, I ask the passage of this order.

Mr. WESTON, of Duxbury, desired that the order be laid over until to-morrow.

The order, accordingly, in obedience to the rule, lies over for consideration to-morrow.

*Orders of the Day.*

On motion of Mr. BUTLER, of Lowell, the Convention proceeded to the consideration of the Orders of the Day, the first subject on the Orders being the resolve introduced by the gentleman from Lowell, (Mr. Butler,) on the subject of

*Judicial Tenure of Office.*

The resolve was read, as follows:—

*Resolved*, That all judicial commissions which shall issue to any person from and after the first day of August, in the year one thousand eight hundred and fifty-three, shall confer no greater tenure of office than the term of ten years.

The question being on its final passage.

Mr. BARTLETT, of Boston. I should be glad if the gentleman from Lowell would explain to us the purpose of this proposition.

I will put a case to the gentleman; a case which would be one of some embarrassment, I think: Suppose before this Constitution, which we are now forming, goes into effect—and it cannot do so until after it shall have been voted upon by the people, in November next, or at such time as may be fixed—suppose, in the interim, an appointment of a judge is made, and a commission issues. In what form will that commission be? Shall it be in the alternative? Shall the appointment be for life, unless the alternative be accepted? And I submit to the gentleman from Lowell, whether the object to be attained, makes it worth while to put into the Constitution a fragmentary provision of this description. I hope it will not be made a part of our fundamental law.

Mr. BUTLER. I endeavored to explain the reasons why I introduced this resolve, at the time I offered it, but owing to the limitation of time by our rules, I only partially succeeded. We have agreed that all judges to be appointed hereafter, shall hold their office for the term of ten years. We have also provided that the present judges shall retain their office according to the tenors of their commission. Now, it is evident that this Constitution cannot go into effect until sometime hence, say the first of January, and there will be five months intervening, when, without intimating that any wrong will be done,

many of the judges may die, and young men whom we do not now think of, may be put in their places, who will, of course, hold their office for life. It is merely for the purpose of reaching all such cases, that I have introduced this resolution. Almost every one is agreed as to what is its intent and force; but the gentleman from Boston finds two difficulties. He asks: How shall the commissions issue under these circumstances? I reply, they will issue just as they do at the present time. The governor does not know whether this Constitution will go into effect; he acts under the present Constitution, and officially knows nothing of the changes which have been made, until the Constitution we are now amending has been accepted by the people. It therefore has no binding force whatever upon him. I submit it to the legal opinion of the gentleman, that if we should say nothing about the judges, and make no provision for them, whether the commissions they at present hold will not expire immediately upon the adoption of the new Constitution, whether those commissions were granted ten, or fifty years ago? To prevent such an occurrence, we have provided that they shall not expire during their good behavior. So that I do not see that we can do any harm by carrying out what is the intention of the Convention. All that the governor has to do is to issue the commissions under the old Constitution, and then the Convention says that the commission shall have a ten years' tenure.

Now it has been said that this had better not be done; that it is not of sufficient consequence to be put into the fundamental law. Sir, if every man would do just as he ought, we should be in no need of a Constitution, of a law, or of judges; but unfortunately, it has been found since the days of Adam, that men will not do as they ought; and, consequently, need the restraint and guidance of some rule and law. Now, if nobody would die, if I could be insured that nobody would resign between the present time and the time when this Constitution will, if adopted, go into effect, I would not have introduced this resolution. But I do not wish that the whole judiciary of the State shall be changed in five months, and their places filled by young and inexperienced men, who will be fastened on us for life; especially when I find it authoritatively proclaimed by one of the governor's council, in a paper which he edits called the *North Adams Transcript*, that the only qualification for the office of judge of probate, is that he should be "a live young Whig." It is the official expression of one of the governor's council, published in the *Transcript*, and indorsed by the *Atlas*.

Mr. DAWES, of Adams. Will the gentleman permit me to ask him a question?

Mr. BUTLER. A thousand, Sir.

Mr. DAWES. I would inquire whether he would prefer to have a dead old fogy, or a live young Whig? [Laughter.]

Mr. BUTLER. I explained that the other day. A live young Whig grows naturally into a dead old fogy. One is the green sapling, the other is the dry old tree. [Laughter.]

I will not detain the Convention longer, however. I introduced the resolution for the purposes I have already stated, and it has received the sanction and support of the most eminent legal gentlemen of this body.

Mr. BARTLETT. Then the result is about this: The gentleman from Lowell desires, in maturing this provision, to cover the least possible point of time. I would not say that I do not think that consideration so valuable or important as to make it worth while to take so much pains to accomplish it. The strongest argument, however, in favor of this provision, seems to be the probable abuse of political power. Now, Sir, if the history of the Commonwealth furnishes ground for an allegation of that sort, then the proposition of the gentleman is a proper and wise one. But, Sir, I hardly think any gentleman here will undertake to show that any such danger exists; and I hope, therefore, that the provision we have adopted upon this subject, shall remain where it is.

Mr. WALKER, of North Brookfield. I desire to inquire of the gentleman from Lowell, whether he intends this provision to be inserted as a part of the Constitution?

Mr. BUTLER. Certainly I do. The resolve cannot mean anything else.

Mr. WALKER. I made the inquiry because the resolve is not put in the usual form. It does not state that the Constitution shall be so amended, but it is merely a resolve by the Convention.

Mr. BUTLER. I will accept the gentleman's suggestion, and so modify the resolve. I did not know that it was necessary, like the Dutchman's picture of a horse, to write over it to show that it was a horse. I thought every-body understood what it meant. I do not know what else the Convention have to do, but to amend the Constitution.

Mr. WALKER. I merely suggested that the resolve was not in the usual form.

Mr. BUTLER. I accept the gentleman's amendment.

Mr. DAWES, of Adams. I am glad my friend from Lowell, (Mr. Butler,) has ascertained the authorship of that newspaper article to which

he alluded. I am glad that he is not disposed to detract from its merits, by charging it upon me, as he did the other day.

I was a little surprised, however, to hear the gentleman object to the appointment of that judge of probate on account of his being a live young Whig, and because I thought the gentleman himself belonged to the "Young America" party. I had heard the gentleman say so much, heretofore, about old fogies, that his speech the other day, and again this morning, has set me to wondering whether he has not, by a death-bed repentance, become an old fogy himself. But now the trouble is, that he is afraid a live young Whig will grow into an old fogy. Now, Sir, although I had nothing to do with the article alluded to, yet I am disposed to stand by it, and, if nothing worse can be found against that appointment, than that it is of "a live young Whig," to believe that it will prove a good one. But I submit, in all candor, whether it is worth while to put an article into your Constitution, about this matter, because a country newspaper has seen fit to give a reason for the appointment of a judge of probate that does not suit the gentleman from Lowell? I submit that is hardly of sufficient importance to be made the ground of a constitutional provision. If my friend from Lowell cannot find graver reasons for bringing forward constitutional provisions, it seems to me it is very much like trifling with the Constitution. I have no objection to the gentleman's being satisfied, and I think there is a fair chance of satisfying us all. For one I shall be satisfied, and I presume my friend from Lowell will be as much so, if we have appointed to the bench of the supreme court of Massachusetts, and to a seat on the bench of the other courts, men qualified, in every respect, to discharge the duties of the office, whether they be old fogies or live young Whigs. That is all I seek for, and, I presume, is all the gentleman is seeking for.

But, I submit farther, whether it is worth while to arraign an individual upon this floor, who cannot come in and defend himself? I would ask the gentleman from Lowell, whether it is a mark of that courage which stands out, like the phylacteries of old, upon the brow of the gentleman assuming to be a leader of this Convention, to hunt up, for attack, men who are absent at the safe distance of one or two hundred miles, and make onslaught upon them in this Convention? It seems to me, that if no other consideration would deter from such a course, our time has become too precious. If we wish to go upon such errands, there will be an opportunity after the Convention has adjourned.

Mr. HILLARD, of Boston. The gentleman from Lowell, (Mr. Butler,) did me the honor to consult me, before submitting this proposition to the Convention. I said to him, as I say now, that I think it is no more than the legitimate right of the majority—if they choose to insist upon it. It is in the nature of a provision against a remote contingency; but if the majority of the Convention choose to adopt such a provision, I must say, that they are fairly entitled to do so. The Convention, here and now, have determined that the commissions of the judges shall run for ten years, instead of during good behavior. Thus far it may be considered as an expression of the will of the people, whom we represent. But the people, in their primary capacity, will pass upon this change. I hope that they will reject it. If they do, that ends the whole matter; this provision included. If they do not, we must consider it to be the will of a majority of the people of Massachusetts, that their judges shall hold their commissions for ten years, and no more. To that expression of their will, when made, I shall bow with submission. In that event, I think that it is a right of the majority now, and here, to provide that the decision of the people in November, if favorable to their doings, shall have a retroactive effect, so as to cover the interval between the action of the Convention and the action of the people; so that no commission issued in the meantime, shall be upon a tenure to which their wishes are opposed. I think it would be an unfair advantage gained by such party as might be in power during such an interval, if a life commission were issued.

This measure is analogous to a well known legal proceeding. We often attach real estate on the issuing of a writ. By that attachment, the estate is held in abeyance, as it were, until the final decision of the cause. If the plaintiff fail to obtain judgment, the attachment ceases, and the estate is released. If he do obtain judgment, the attachment transfers the title. Now, our vote upon the judicial tenure, is analogous to the attachment of real estate on *mesne process*. Whether we are to have judgment or not, depends upon the popular vote in November. But, in the interval, the majority of the Convention have a right to be in the position of the plaintiff, in such a suit. They have a right to say that the commissions of the judges shall be in abeyance in the interval before final judgment.

Mr. CADY, of Monson. I am opposed to the adoption of the resolve before the Convention. I can see no reason for its adoption. Suppose a vacancy should occur in the mean time, before the adoption of the Constitution, under what law

would the appointment to fill it, be made? What would be the duty of the governor, whose business it is to make the appointment? What would be the tenure of office? I submit that it could not be left indefinite. It must be either that provided by the old Constitution, or it must be under that which we are now framing. Sir, this Constitution cannot take effect until the people have ratified it; and therefore, appointments made before that time, must be made under the present Constitution. Now, to make a provision changing the commissions of officers thus appointed, it seems to me is, to all intents and purposes, an *ex post facto* law. It seems to me that this provision is entirely uncalled for; and unless I can see some reason other than those which have been thus far presented, I shall vote against it.

[Cries of "Question!" "Question!"]

The question was then taken, and the resolve ordered to its final passage.

*Motion to go into Committee.*

Mr. MORTON, of Taunton. There is a subject upon your calendar, in Committee of the Whole, which is of some considerable importance, and which has remained there for some time. I presume it will not occupy any considerable time in its consideration, but I desire that it shall be taken up and disposed of. It has by some means been jostled out of its place, so that other subjects which were behind it in their order, have taken precedence of it in their consideration. I now move that the Convention resolve itself into Committee of the Whole, upon the resolves on the mode of submitting the question of representation to the people.

Mr. BUTLER. If the gentleman from Taunton will pardon me for a moment, there are two subjects which it is very necessary the Committee on Revision should have before them at the earliest possible moment. It will require but a very short time to dispose of them, and then the gentleman can accomplish his object. I hope he will allow these to be disposed of first.

Mr. MORTON. I would inquire if it is not also important to have this subject disposed of, and whether this may not go to the Committee on Revision as well as anything else?

Mr. BUTLER. This is an independent subject; but those to which I have referred, are so interwoven with other subjects that the Committee on Revision can hardly proceed with their work upon those other subjects, until these are disposed of by the Convention.

Mr. BRIGGS, of Pittsfield. I am very anxious that the gentleman from Taunton, (Mr. Morton,) should accomplish his object; but I would say in support of the suggestion of the gentleman from Lowell, (Mr. Butler,) that it is exceedingly necessary that these subjects should go to the Committee on Revision. I would suggest, therefore, that the gentleman from Taunton should waive his motion for the present, with the understanding that when these subjects are disposed of, his matter shall come up next.

Mr. MORTON, of Taunton. If I could be assured that such was the general understanding, I would waive my motion for the present. I have tried on several occasions to bring the subject before the Convention, but have hitherto failed. But with the understanding that it shall come up sometime in the course of the day, I will withdraw my motion.

On motion of Mr. BUTLER, of Lowell, the Convention then resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Nayson, of Amesbury, in the chair, and proceeded to the consideration of the resolve submitted by Mr. Duncan, of Williamstown, upon the subject of

*Uniformity of Receiving Votes.*

The resolve was read by the Secretary, as follows:—

*Resolved*, That the Constitution ought to be amended so as to make the provisions for receiving, assorting, counting, and recording of votes, uniform in the election of all officers whose election is provided for in the Constitution.

Mr. DUNCAN, of Williamstown. Mr. Chairman: Called as we are to amend the Constitution, it becomes our duty to make it as perfect an instrument as the language will admit. It is to be the chart by which the political navigators are to steer the ship of state; it is, therefore, necessary that the directions be simple, plain, and intelligible. And for the purpose of giving greater precision to one of its departments, I introduced the resolve for making an uniform provision for the receiving, assorting, and counting of votes, in all elections provided for in the Constitution. If gentlemen will turn to chap. 1, sec. 2, art. 2, they will find it the duty of the selectmen to receive, assort, and count the votes, in the presence of the town clerk, who shall make a fair record of the same, in the presence of the selectmen; and now, if we turn to chap. 2, sec. 1, art. 3, we shall find it to be the duty of the selectmen, as in the first instance, to receive and assort the votes, but the duty of the town clerk to count them, and make a fair record of the same, in presence of the selectmen. I admit that a difference so

trifling as this seems to be, would not be a sufficient reason for calling a Convention to amend the Constitution; but since it has been taken in pieces, and the separate parts in our hands, I see no reason why each part may not be perfected as far as we are able to do so, that when it is again joined, it shall be as perfect as a whole as it is in any of its parts. The Constitution has been considered—and justly, too—a work of great merit and perfection; but not as perfect as to be entirely free from that species of blunders which has lately been styled Bunsbyisms; for instance, in chap. 1, sec. 1, it reads thus: "The legislative body shall assemble on the first Wednesday in January, and at such other times as they shall judge necessary, and shall dissolve and be dissolved on the day next preceding the said first Wednesday in January," &c. By this provision, a dissolution of the legislature is made obligatory at least one day before it meets. I suppose this error crept in through the loose use of the words "said" and "aforesaid"; they are words of great repute in the legal profession, and have a magisterial sound in professional documents, but are not quite adapted to constitutional perspicuity. And again, in chap. 1, sec. 3, it reads: "Every member of the House of Representatives shall be chosen by written votes, and for one year at least next preceding his election, shall be an inhabitant within the town he shall be chosen to represent, and shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid."

So uncertain was the language, in its meaning, that it was necessary to resort to an opinion of the supreme court to ascertain what intention the framers of the Constitution had in view when they adopted that section. If it be important that we have a Constitution, it becomes equally important that we have one that can be understood by every person without the intervention of a judicial opinion; if we cannot do it, then I opine that our constituents made a mistake in sending us here to meddle with the old one.

For myself, I desire it to go forth as free from doubt and uncertainty as any human Constitution can be. And to bring it right home to the people, I hope the time is coming when it will be published in our school books, that the children of this Commonwealth may early learn its provisions, and estimate the worth of such an addition to our school literature.

The question was taken, and the resolve was agreed to—ayes, 117; noes, 35.

On motion of Mr. EARLE, of Worcester, the Committee then rose, and the President having resumed the chair of

THE CONVENTION,

The chairman reported that the Committee of the Whole, to whom had been referred the resolution in relation to the manner of sorting and counting votes, had had the same under consideration, and had instructed him to report the same, with a recommendation that it pass.

The PRESIDENT. The question is upon ordering the resolution to a second reading.

Mr. LELAND, of Holliston. We have heretofore introduced a resolution, that state and town officers may be elected by secret ballot. This resolve says: "that the Constitution ought to be amended so as to make the provisions for receiving, assorting, counting, and recording of votes, uniform in the election of all officers whose election is provided for in the Constitution." It seems to me, if we adopt that resolve, we shall get into difficulty, as it will conflict with a provision which we have already adopted.

Mr. ELY, of Westfield. It seems to me this matter is well understood throughout the Commonwealth, and a change would make the matter much worse than it was before. I therefore move an indefinite postponement of the whole matter.

Mr. BOUTWELL, for Berlin. I think that the motion of the gentleman from Westfield (Mr. Ely) ought to be sustained by the Convention. I think that the existing provisions are perfectly plain, and generally well understood. There may be some difference of opinion as to the mode of receiving, counting, and recording votes for the different officers who are to be elected by the people. Whatever those modes are, they are well understood. I think this provision will operate in conflict with some provisions which have already passed the Convention. In addition to that, the Committee on Revision have made Considerable progress. Some of their work is in the hands of the printer; but the passage of this resolution, so far as I understand it, will throw a considerable part of it into confusion. This Committee have as much work as they can possibly do, and we should not throw upon them any unnecessary work. I believe the passage of this resolution is unnecessary, that it will lead to a great amount of labor in the Committee, and will be of no possible benefit to the people.

The question was taken upon Mr. Ely's motion, and it was agreed to.

So the resolution was indefinitely postponed.

*Election of Justices of the Peace.*

Mr. BUTLER, of Lowell. I move that the Report of the Special Committee upon Justices of the Peace, be taken from the table.

The motion was agreed to.

Mr. BUTLER. I now move that the rule by which it is required that this subject shall be recommitted to a Committee of the Whole, be suspended, and that the resolve be considered at this time.

The motion was agreed to.

The Report of the Select Committee was then read, as follows:—

*Resolved*, That it is expedient to amend the Constitution so as to provide that

1. Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such Justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers, and duties, as are now exercised by Justices of the Peace, which jurisdiction, powers, and duties, may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

2. Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein, according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

3. Justices and Clerks of the police courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof for a term of three years.

4. In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose election is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

Mr. BUTLER, of Lowell. In the absence of the chairman of this Committee, I will simply state that these resolves were reported with entire unanimity by the Committee, as regards all the details. Two gentlemen of the Committee, who are well known to be opposed to an elective judiciary in any form, opposed the election of trial justices, and justices of the police court. With that exception, the entire details were arranged with perfect unanimity by the Committee.

The first resolution provides, as will be seen:—

Trial Justices shall be elected by the legal voters of the several towns and cities where, at the time of such election, there is no police court established by law, who shall hold their offices for a term of three years.

Every such city or town shall elect one such justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census.

They shall have the same jurisdiction, powers, and duties, as are now exercised by Justices of the Peace; which jurisdiction, powers, and duties, may be changed by the legislature: *provided*, that no Trial Justice shall act as such upon his ceasing to reside in the town in which he was elected.

The proviso contained in the last clause, is to prevent a man getting elected as justice in one town, and then moving into another town where he could not have been elected, to carry on the business of a justice of the peace. An amendment was offered here in Convention yesterday, and favored by some gentlemen, that trial justices should have jurisdiction only in the towns where they were elected. There would be infinite mischief arising from such a provision. Suppose, for instance, that a trial justice of the town is sick. Then no other trial justice having jurisdiction in that town, if there should be robbery, theft, or murder, the offender must go unwhipped of justice, because there is nobody to try him, until that trial justice gets well. Suppose, in a civil case the trial justice should be interested, or one of the parties interested in the suit, should be a brother, father, cousin, or some other relative of the justice. There would be nobody in that event, to try the case, because there is no jurisdiction. I might enumerate other cases, showing the mischief which would arise from the adoption of such an amendment.

The second clause provides as follows, that

Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

This provision leaves these officers to take acknowledgment of deeds, to marry people, to administer oaths, to take depositions, hear cases of jail delivery, to issue warrants for parish and

town meetings, to stay rioters, and to do various other things which have heretofore attached to this ancient and honorable office of the justice of the peace. Some gentleman here have contended that every justice should have the power to issue warrants. I can give you an illustration of how the thing would work. Justices of the peace having an opportunity to issue warrants, go to work and get up cases, so that they may have all the business they want. This thing has been done in one case. It might be done again; and, therefore, it was thought best to take that power away.

The third clause reads as follows:—

Justices and Clerks of the Police Courts of the several cities and towns of the Commonwealth, shall be elected by the legal voters thereof for a term of three years.

Mr. EARLE, of Worcester. I wish to make an inquiry of the gentleman, whether, by the Constitution, trial justices have the same powers with justices of the police courts? If I understand it rightly, they do not, and by acts of legislature establishing some police courts, they have not the same power.

Mr. BUTLER. I thank the gentleman for calling my attention to this matter. Police justices are not known as such by the Constitution, but have been included under the term of judicial officers. Police courts have been established in various towns, and they have everywhere been given the powers and jurisdiction of justices of the peace, with a single exception, and that is in the city of Worcester, which was omitted by a mistake in framing the act. I believe I speak correctly. I know that in Salem, Newburyport, Lawrence, Lowell, and in Boston, police justices have the same jurisdiction to try causes in the county, that justices of the peace have; but by a mistake in the act of the legislature, those officers in the city of Worcester have jurisdiction only over crimes committed in that city. It is better that the legislature should provide a remedy for this single case, than to make any provision for it in the Constitution, as the difficulty can be easily remedied. We were fortunate enough to have upon the Committee a gentleman from Worcester, (Mr. Chapin,) who had that thing in mind, and who agrees in the view which we have taken of this matter. These justices and clerks of the police court are judicial officers of the same class as trial justices, and it was thought best by a majority of the Committee, that they should be elected as trial justices are, and upon that question only, was there any division of opinion upon the part of the Committee. The Committee followed out what they conscientiously believed to be the true rule in regard to the election of justices of this character.

In regard to the resolutions contained in document No. 104, which were submitted to us, the Committee agreed that it was best to strike out the second resolution, which reads as follows:—

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of the charges against him, and an opportunity of being heard in his defence.

It was stricken out entirely, because it would seem to give the governor the power to remove every officer in the Commonwealth, from the attorney-general down.

The fourth resolution, corresponding to the third in the Report of the Committee, Document 104, we reported with a slight amendment.

In case of vacancy by resignation, or otherwise, of any State, County, or District officer, excepting members of the legislature, whose election is provided for in the Constitution, and whose term of office does not expire at the next annual election, the Governor shall issue his warrant to the mayors and aldermen of the several cities, and the selectmen of the several towns, to fill the vacancy at the next annual election after it shall have happened; and the Governor, with the advice and consent of the Council, may appoint suitable persons to fill such vacancies until an election by the people.

This was done so that where there is an elective officer, such as county commissioner, for instance, or district-attorney, who shall be elected for three years, and die in the middle of the first year, the governor might issue his warrant at the next annual election, to make an election to fill the vacancy, and in the mean time, might appoint some one to take the place. That prevents the calling of the people too frequently to make an election, and at the same time secures the ends of justice.

There was a slight doubt in the minds of some gentlemen, as to whether the clerks of the district court were county officers, or the justices; and in order to do away with that doubt, we propose to amend by inserting after the word, "officer," the words, "and clerks or justices aforesaid." That will settle the question, without any farther trouble; for it struck the Committee, that there might be some sharp person who would find that a clerk of a district court was neither a district nor a county officer, and then there might be a question how he could be reappointed in case of a vacancy. The addition of the words which we

propose, will cover the case, both of the justices of the police court, and trial justices.

Now, one thing farther. One gentleman seemed to have the belief that there was no way of removing a justice of the peace. I agree with him. I have defended before legislative committees, two or three justices of the peace, and I have prosecuted one or two in my time, and I can only repeat what I said the other day, that the machinery seemed like a sledge-hammer for killing a musquito. It never seemed to hit him. You cannot remove a justice of the peace. A gentleman observed, that the people remove the trial justices once in three years; and they are subject to impeachment for any gross outrage besides. The people will take care of that. The justices of the peace have little or nothing to do but to marry persons, and they cannot do that without their consent, so that they cannot do much mischief. We leave that as it is. I have to beg pardon for so imperfect an explanation of these matters, as the duty devolved on the chairman of the Committee.

Mr. SIMONDS, of Bedford. I wish to inquire of the delegate from Lowell, whether in the enumeration of the powers of the second class of justices of the peace, they are prohibited from issuing warrants in civil actions?

Mr. BUTLER. The issuing of a writ, Mr. President, if I understand it, is only an incident to the power to try. He cannot issue a writ returnable before anybody else, and if he cannot try the case himself, the writ which he issues will be as innoxious as a last year's almanac; it will do no harm to anybody. I think, that if we take away the power to try and determine a case, we take away the power to issue a writ.

Mr. HUNTINGTON, of Northamption. I would suggest, that there seems to me to be a very material omission here. Supposing these resolutions to be adopted by the people, obviously under the first resolution some time must elapse before the trial justices can act in that capacity. The second resolution provides, that the jurisdiction of all other justices of the peace, shall be taken away. Now, it seems to me there will be an interregnum, a time between the adoption of this amendment, or the ratification of it by the people, and the election of the trial justices, so that there will be no one to issue warrants for the trial of criminals. I do not see why the jurisdiction of the justices of the peace is not taken away according to the phraseology of the second resolution; and I see no manner in which a criminal can be tried in the mean time between the adoption of the Constitution, and the election of trial justices. The second resolution provides, as follows:—

Justices of the Peace, Justices of the Peace and Quorum, Justices of the Peace throughout the Commonwealth, and Commissioners to qualify civil officers, may be appointed by the Governor and Council for a term of seven years; and those now in office shall continue therein according to the terms of their respective commissions: *provided*, that the jurisdiction of all such justices shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

The provision is, then, that they shall have no power to issue a warrant after the adoption of this amendment. It seems to me there should be a clause extending the jurisdiction of the present justices, until the the trial justices shall be elected.

Mr. DUNCAN, of Williamstown. Mr. President: I wish to make an inquiry. I wish to ask, if at this juncture, a motion to strike out and insert, would be in order?

The PRESIDENT. It would.

Mr. DUNCAN. Then I move to strike out of this Report all after the words "Resolved, that it is expedient," and insert the following resolution: "That justices of the peace shall be elected by the legal voters in the several towns and cities, as may be hereafter determined by law." Among the reasons which induce me to offer this substitute for the Report of the Committee, is, that it simplifies the proposed amendment, and avoids the misconstruction which must necessarily follow the introduction of so cumbersome an article into the Constitution. A short time since, it was urged as an objection to the passage of a report, that its length implied a prodigal waste of money and paper, which the economizing people would reject on the ground of waste. If that argument was entitled to any consideration then, it certainly applies with greater force now. Again, it is in the nature of a compromise, when none was called for, or desired; and instead of getting just what every one wants, a hybrid has been engendered which bears no very striking resemblance to either dam or sire. It reminds me of a schism which took place among the Quakers a few years since, with regard to the personal appearance of his satanic majesty, one party believed him to have horns, and the other, that he was a mooley; so the horns, and the no horns battled each other in a gallant, but unquaker like manner, till at last it was obvious that the matter must be settled, or the society ruined; so they agreed to a compromise. They settled it by voting that the devil was an unicorn; a creature which neither party loved or wanted, but was infinitely better than being foiled by an opponent. It is pretty much so in this case; if this Report is adopted, we shall have what no one precisely

wants, and all the consolation we shall have, will be the satisfaction of a compromise.

It will be remembered, Sir, that not many years since, the legislature passed an act authorizing the governor to appoint trial justices, and so repugnant was that act to the people, that the following legislature repealed it almost without debate. It was urged that none but partisans were appointed; and so notoriously true was it, that a trial justice was looked upon as a common nuisance; some exceptions of course, but this was the general feeling. And now, shall we proceed deliberately to reënact a law which was repudiated so soon after its passage, and to perpetuate the same, by making it a finality? It is a reasonable presumption, that in all small towns entitled to but one trial justice, his political stripe will correspond with the local dominant party, and the evil heretofore complained of will be increased. The minority will look upon such justices with suspicion; and how can it be otherwise? for, in the heat of political contests, animosities will be engendered, which will follow the justice in his judicial proceedings, and whether he decides right or wrong, complaint will be made that he leaned to, or from, according to the bias of client or magistrate; and the courts of justice will be looked upon as an inquisition for political martyrdom. And, besides, it makes an invidious distinction between the justices of the peace, which seems to be entirely uncalled for and unnecessary. I submit it to gentlemen, that it is much better to allow the people to regulate this matter themselves, than to propose any half way measure, and give them the alternative of that, or nothing. This Report proposes but one trial justice in a town; and, an additional one depends upon the contingency of numbers. Is it not perfectly obvious that this provision will lead to great practical difficulties, which gentlemen from large towns seem to entirely overlook. A justice of the peace is not a polypus, but a being possessed with the powers of locomotion; it will often happen, therefore, that he will be absent from home, and sometimes will be prevented through inability, to attend to his judicial duties. Under such circumstances, those who seek justice, at law, will be compelled to migrate from one town to another, till they succeed in overtaking some wandering justice, or, in finding some legal fixture. Another difficulty suggests itself; many small towns have two or three villages within its borders, and often at a distance from each other; and inasmuch as there can be but one trial justice in the town, there will be a strife as to which village shall have him. I can assure you that a justice of the peace in a small country town, is no inconsiderable personage, and the little village which is fortunate enough to have *the squire* within its limits, will naturally enough exalt itself above its less favored rivals. This will lead to animosities, and I have no hesitation in saying, that in all such towns—and there will be many—this provision in the Constitution will be an unfortunate one.

I am decidedly in favor of the proposed amendment—with perhaps a modification, if it should meet the views of the Convention—and it is this: "That no town shall have less than one justice of the peace," and leave it entirely with the inhabitants of the towns to elect as many as they choose. I have not the least doubt but the people can choose men from their midst, to administer justice, much more to their satisfaction than can be appointed by the governor; and there is not the least danger that they will elect more than they want, or less than is necessary. The safest course, in my estimation, is, to let them regulate this question as to how many justices they will have, and I opine that the people have too much good sense to suffer inconvenience, when they have the power to adjust the number of justices to meet their necessities.

Mr. WATERS, of Millbury. The mover of the amendment now under consideration, Mr. Duncan, of Williamstown, has said that these resolutions providing for the election of justices of the peace by the people, were not called for by the people. In that remark, he may speak for his constituents, but he certainly does not for mine. Doubtless, to members representing cities and farming districts, this subject seems to be one of minor importance, and to occupy altogether too much time of the Convention. But I assure all such members, that in some districts, especially in manufacturing districts, there is no subject before us which excites a deeper or more general interest.

The office of justice of the peace, though limited in powers and subordinate in jurisdiction, is one of the most important in the Commonwealth. He stands in the nearest relation to the people of any judicial officer, and in criminal matters, has jurisdiction to a certain extent over all the persons and property of his county. Before him the accused, whether innocent or guilty, are usually first arraigned—before his court, any person is liable at any moment to be summoned to appear, either as principal or witness, and for failure thereof to be committed for contempt of court.

This office, like that of sheriff, is one of the most ancient known to common law. Originally they were chosen in England by the people, from the most sufficient knights, esquires, and lords of

the realm, and two or three to each county only were allowed. Then, to be an "esquire" in old England, was an honor worth possessing, and history informs us that they were mostly noble champions of popular rights. But at length, one of England's tyrants, King Edward II., finding these esquires unsubmissive to his sovereign will, wrested from the people the power of their election, and vested it in the crown; and there, in the crown of England, it has remained full five hundred years, to the present hour. Copying from the institutions of England, we have vested the power of appointing these officers also in the executive. As a natural consequence, the number of commissions granted, has been vastly increased, and the dignity of the office immensely degraded from its ancient estate. A commission is granted to nearly all who apply, to many gratuitously, without regard to their qualifications; and the whole number now holding commissions throughout the State, is about five thousand. As might be expected, from such an army of executive appointments, many very unsuitable, and some perfectly unscrupulous and desperate persons have been appointed, and clothed with magisterial powers over the persons and property of their fellow-citizens. Such persons usually regard the office not so much as one of honor, as of private emolument—a means by which they are to get their living out of the public, at some rate or another. With this view, they readily issue their warrants upon all applications, however frivolous, and at the instigation of personal malice, it may be, on the part of the complainant. By a natural law, action produces reaction, parties are formed, new difficulties and new issues spring up, and the result is a bountiful crop of law-suits, which destroys the peace and happiness of the community around; and while it impoverishes the clients, fills the pockets of the magistrate. Thus, an officer of this stamp, especially if to his other qualifications be added that of pettifogger, as sometimes happens, will manage to keep a whole community in constant commotion, and boiling like a cauldron year in and year out, and that, too, under the sacred but prostituted forms of law and justice. Such a magistrate, though professing to act as a keeper of the peace, is really the greatest disturber of the peace—a piece of injustice—a social sliver which keeps up a constant irritation around, and there can be no peace until he is withdrawn from his position. By him the temple of justice is converted into a mill to grind clients and exact toll. I recollect an instance where a peace-loving citizen was committed to jail by one of these dogberrys, for contempt of court, because he refused to proceed in a criminal action after it was all settled; and when he applied to counsel for relief, they told him there was no remedy, for every magistrate was supreme judge in his own court, as to matters of contempt of court. So true it is that

> "Man, proud man!
> Dressed in a little brief authority;
> Most ignorant of what he's most assured,
> Plays such fantastic tricks before high Heaven
> As make the angels weep."

In the practice of a justice, nothing requires a more careful discrimination and sound judgment, than to decide when to issue, and when to refuse to issue his warrants; for it is clearly as much his duty in some cases to withhold, as in others to grant them.

A young man of my acquaintance, once went to a justice, in high excitement, for a warrant to arrest one with whom he had difficulty. The justice heard his story—told him to go home, sleep upon it one night, and come to him the next morning. He did so, and at once exclaimed, "I thank you, Sir, and I thank God, that my request last evening was not granted; for if it had been, I should have been embroiled in a quarrel which might have lasted during my life. Now it is all settled, and we are good friends!"

What a different result would have ensued, had he applied to a justice of the stamp above described.

Various attempts have been made to remove justices of the peace, and though in some instances the most gross fraud, corruption, oppression, and malpractice of various kinds were fully proved, yet no one has ever been removed under our present Constitution, owing to an ambiguity in its provisions as to the manner of removing them, —one construction being by address—the other by impeachment. One of the most remarkable cases of this kind, will be found reported at length in Senate Document, 1850, No. 104. From this, it appears that the citizens of one of the interior towns of the State, finding their peace and quiet constantly disturbed by petty justice courts, and feeling aggrieved by the oppressive decisions of the magistrate, sent to the legislature a petition containing thirty-five distinct allegations, signed by a majority of the voters of the town, and praying for an investigation. This petition was presented in the Senate, and referred to a preliminary committee, to report what court of investigation the Constitution required. This committee decided to proceed by address, and recommended the appointment of a joint committee of the Senate and House, consisting of nine. Such a committee was accordingly appointed, of whom the honorable member from Adams, (Mr. Dawes,) was chairman.

After a very long protracted trial, in which about one hundred and fifty witnesses were examined, and eminent counsel were heard on both sides, the committee unanimously reported that most of the allegations were sustained—that the respondent had been commissioned as justice of the peace fifteen years, during which he had collected a vast many fines, not one dollar of which had he paid over to the State, as the law required, but appropriated the whole to his own use. Also, that in some cases he had acted both as magistrate and counsel, and received fees for services in both capacities—that he had used his office for gambling, and otherwise conducted in a manner calculated to bring the government and laws into disrepute among the people. Whereupon the committee unanimously adopted the form of an address to his excellency, the governor, to remove said justice from office. When the report came up for consideration in the Senate, a distinguished member of that body, now on the supreme bench of this State, arose and opposed its adoption, on the ground that justices of the peace were not removable by address; and while he conceded fully that the respondent ought to be removed, yet his regard for the Constitution would not allow him to see it perverted for that purpose. Thus, the wishes, feelings, and interests of the petitioners, and the arduous labors of that committee, involving an expense to the State and others of at least two thousand dollars, were all baffled, and fell to the ground, merely from a defect in our present Constitution; and yet some members contend that it needs no amendment. If, with such a strong case, the attempt to remove failed, it may well be conceded that no attempt can ever succeed. Several others have been made, but they have all proved alike abortive.

In this regard, compare our government with the executive of the United States. When a new administration comes into power, the president sweeps by the board secretaries, treasurers, foreign ministers, collectors and postmasters, by the thousand—all at one fell swoop; and that, too, not because they are dishonest, incapable, or unfaithful, but simply because they do not agree with him in political sentiment.

But here in Massachusetts, there is not power enough in either the executive, judicial, or legislative departments of government, or in all combined, with an expenditure of thousands of dollars, to turn out a petty justice of the peace for the most outrageous frauds, corruptions, and oppressions, committed for fifteen years! Such imbecility on the part of any government is calculated to bring it into disrespect and contempt among the people. It has been said with more truth than poetry,

> "For forms of government let fools contest,
> That which is best administered, is best."

The adoption of the resolutions now before us will remove most of the evils of the existing system. They reduce the term of office to three years, and make the incumbents elective by the people. The people must be supposed to be better judges of the qualifications of candidates than his excellency, who was perhaps never within the purviews of the town where they reside. They will be careful to select those who have least inducements to promote litigation, and in whose integrity and sound judgment they have full confidence. This litigation will be checked, both in the number of suits instituted, and in the number of appeals taken. Finally, the office will be restored to its pristine dignity and honor among the people.

Mr. CHAPIN, of Worcester. I rise to say one word in relation to our police courts, upon which subject I find a difficulty in the minds of some members of the Convention. There is an act, passed in 1852, which provides that

> "The several police courts in the Commonwealth may exercise all the powers and perform all the duties given to and required of Justices of the Peace, by the laws of this Commonwealth, in and for the several counties in which said courts are respectively located."

Now this resolution leaves these courts precisely as they are, without any change whatever. It leaves the matter of the police courts in Worcester County, and in the other counties, precisely where it should be. In reference to the motion which is already made, I have simply to say, that I hope the amendment will not be adopted. It seems to me that this resolution provides, justly and properly, for the wants of the community. The only complaint which has been made in the section of country where I reside, grows out of the *judicial jurisdiction* of justices of the peace. There is and has been no complaint in regard to their ministerial duties. Men have been appointed, have undertaken to try cases, have interfered with their neighbor's property and liberty, who were utterly incompetent to perform the sacred duties which belong to the office of justice of the peace. All we ask, and all the people wish, is, that those officers who are to exercise these duties, which are so important to the citizens of the several towns, should be elected by the people of those towns; and although I, for one, do not agree to the doctrine of electing judicial

officers when their decisions are to be final, yet in this case I will agree to it. I will go farther, and say that I wish this Convention had power to amend the Constitution of the United States in regard to the election of postmasters. Officers of that kind, who are brought into such intimate relations with the people of the several towns, should be elected by the people. I think we have provided here for precisely what we want; and here, as in all other cases, I wish to have our acts as free as possible from doubt and uncertainty.

Mr. LORD, of Salem. I wish to submit an amendment or two, which I will now state. I should like to amend the first resolve by striking out the words "are now exercised by," and inserting the words "now have," after the word "peace," and also by striking out the words "which jurisdiction, powers, and duties, may be changed by the legislature," so that, as amended, that clause will read as follows:—

They shall have the same jurisdiction, powers, and duties, as justices of the peace now have: *provided*, that no trial justice shall act as such upon his ceasing to reside in the town in which he was elected.

The reason suggested by my friend from Andover, yesterday, in relation to this change, that the legislature might have power to diminish the jurisdiction, seems to me not a valid reason for retaining this phraseology, because the power to change is the power to enlarge, as well as the power to diminish. I see no constitutional objection, if that phrase is put there, to the legislature's providing, to put an extreme case, for the trial of the very highest offences by a justice of the peace, who should preside over a jury. I think the legislature have not had power to make the justice of the peace any different officer from what the office was understood to be at the time of the adoption of the Constitution—an office of inferior jurisdiction—and which could not be changed, the office being established and recognized by the Constitution.

Mr. DAWES, of Adams. I want to ask the gentleman from Salem, if he will permit me, whether, since this Constitution was adopted, the legislature have not granted or conferred power on justices of the peace to preside at jury trials?

Mr. LORD. I think the legislature has conferred power on them to bring in six men, in certain cases, as referees. The gentleman for Wilbraham, the other day, told us that we had improved our institutions which we brought over here from England. Here is an illustration of it: the trial by jury is so changed that we now have three men, or six men, instead of twelve. But, Sir, I never believed that six men made a jury. When the Constitution says that the right of trial by jury shall be preserved, it means a jury of twelve men, not a jury of six men, or of three men, or two men, or one man. Calling in three or four men does not make them a jury, according to the good old ideas of the common law. If the law providing what is called a jury of six, had made the decision of those six final, and allowed no appeal to a real constitutional jury, composed of twelve men, I should not hesitate at all to say that such provision was unconstitutional. There was no more right to reduce a jury to six men, than to one man.

Mr. DAWES. I would like to be permitted to ask the gentleman another question. Will he tell me whether, at the time the Constitution was adopted, a justice of the peace had the right to demand of a pedlar whether he had a license?

Mr. LORD. I think it was competent for the legislature, if they chose, to put that power upon them.

Mr. DAWES. That does not answer my question. I understood the premises of the gentleman to be, that the legislature could not confer any new power, except that which justices of the peace had at the time when the Constitution was formed. I understand that there has been a course of legislation ever since the Constitution was adopted, which had the effect to change or diminish the powers of justices of the peace. I understand that to have been the course of legislation; it may have been all wrong. The gentleman can, perhaps, answer me, as in relation to justices of the peace, he thinks the jury trials with six men are unconstitutional.

Mr. LORD. I did not say that it was an unconstitutional provision to make what is called a jury, with six men. I said that it would be unconstitutional if you made their jurisdiction final; and if, in a suit involving more than twenty dollars, you could have no other tribunal than this six-men jury.

Mr. BUTLER. If the gentleman will permit me, I will ask him a question upon that subject. I should like to have him tell me whether the legislature did not pass a practice act, by which a jury of twelve men could be summoned by a justice of the peace in a case of forcible entry and detainer—a jury of twelve men—a jury in every sense of the word, equal in number to the twelve apostles.

Mr. LORD. I am not responsible for an act which the legislaure passed in 1851, and repealed again in 1852. I do not propose to consider that at all. And in answer to the suggestion of the

gentleman from Adams, I did not say that no change whatever could have been made by the legislature—no duties could have been imposed. What I said, or what I meant to say, at any rate, was, that the judicial jurisdiction of justices of the peace could not be elevated by the legislature into the higher judicial duties, such as devolve, for example, upon the supreme judicial court. My proposition was this: that by this proposition, inasmuch as you say in your Constitution, by express words, that the jurisdiction may be changed, and do not confine it to subjects of like nature, you may give justices of the peace any jurisdiction that you choose, provided you keep within the provision of the United States Constitution, and the Bill of Rights in our own Constitution, if that be saved to us, that they shall not have any jurisdiction against trial by jury. But I have no time to discuss that point now.

I want to suggest, also, the propriety of striking out the words "the issuing of warrants in criminal cases." This is a matter which ought to be amended by law. Take all those cases in which there are police courts. The law provides now that justices of the peace may issue warrants, and those warrants shall be made returnable before the police courts. No mischief is done because these justices of the peace, have no power to try. They merely issue warrants, and those warrants are returnable before the police courts. In those places where you have police courts, you have no trial justices; but it sometimes happens in Boston, Salem, Newburyport, Lowell, and New Bedford, and perhaps in other places where there are police courts, that, in the absence of the police justice, there is a necessity for immediate action, and a warrant must be issued by some magistrate, and made returnable before that police court. I think that if we say, by a constitutional provision, that no magistrate whatever, in the city of Boston, shall issue a warrant, no matter what the circumstances may be, returnable before the police court, that will be unwise; and it seems to me that the whole difficulty is remedied by the phrase that "the jurisdiction of all such justices shall not extend to the hearing or trial of any causes." The difficulty has not been the issuing of warrants made returnable before any tribunal; but the only difficulty has resulted from the attempt to try causes by incompetent magistrates. As it is not in order now, to move the amendments which I have suggested, I have merely made these remarks; and if they strike other persons favorably, they can move them. I tried very hard yesterday, but I could not get a vote of the Convention in favor of my propositions. Although the Convention rejected them, I still think there is good sense in them; and this is in accordance with the legislation of the last fifteen years, upon the subject of the police courts, and in accordance with public sentiment.

When you provided that trial justices should be deemed to have vacated their office when they removed from the town by which they were elected, it seemed to me that the purpose was to prevent justices elected in one town from having jurisdiction in another town; and the proposition that I made, was this: that where all the parties —of course I mean parties to a civil cause—have a residence within the Commonwealth, then the trial justice shall not have jurisdiction, unless some one of them has a residence within his town. If there are two parties, it should be either the plaintiff or the defendant; or if there are three parties, then it should be either the plaintiff, or defendant, or trustee. However many parties there may be, if there should be three or four defendants or trustees, if they all have a residence in the town in which the justice resides, then he shall have jurisdiction. That is just what we say in relation to police courts. Wherever we establish police courts, if both parties reside in the town, then the justice has jurisdiction.

If I understand the amendment that was read, and which is offered as a substitute, I am inclined to think that that is the best proposition—that the legislature should have power to classify and define the powers of the several kinds of justices of the peace—and it seems to me that that is a matter in regard to which we ought to have some constitutional provision.

Mr. DAWES. There are two or three objections to this proposition, in regard to which I wish to say a few words; and first, as to the jurisdiction. The apprehension of the gentleman from Salem, seems to me, to be unfounded. Our present Constitution leaves the jurisdiction of all the courts to the legislature. It establishes your supreme judicial court, and provides for such other courts as the legislature may see fit to adopt. The Constitution, therefore, clothes the legislature with the power to create just such courts as they please. It does not even define the jurisdiction of the supreme judicial court, but leaves the matter entirely open to the legislature. The legislature may clothe it with few or with many powers. They may make it a higher court, for the hearing of capital cases, or for the hearing and deciding questions of law, only, or for the hearing of jury trials also.

It was thought, by members of the Committee to whom this matter was yesterday committed, as it was by those who framed the old Constitu-

tion, that it was best to leave this matter of jurisdiction entirely to the legislature; and as it was apprehended that no danger would arise in relation to the other courts, so it was not apprehended that any danger would arise if this matter was left to the legislature also.

Mr. LORD. I desire to ask the gentleman whether he believes it would be competent for the legislature to make justices' courts courts of record?

Mr. DAWES. Undoubtedly. But I will ask the gentleman from Salem a question which will answer his, and that is, whether he is perfectly certain that they are not courts of record now?

Mr. LORD. They are not.

Mr. DAWES. The supreme court, I believe, has given an opinion upon that point, and that must decide the matter between us.

But, to proceed. The gentleman wishes to amend by giving justices power to issue warrants in criminal cases. Why, Sir, the great evil complained of, and to be remedied, is the power which justices have all over the Commonwealth to issue criminal warrants. I do not believe, with the gentleman from Salem, that the only difficulty is in trying criminal cases; cases are instituted that ought never to be tried before any justice of the peace. I think it is a matter of quite as much moment to determine when a warrant shall be issued, as it is who shall try the cause. When once instituted, the case must be tried, however improperly begun. I do not think that every man who holds the office of justice of the peace should have the power to issue a warrant against anybody that he pleases. I think the community has felt the evil of this long enough, and a remedy will not be effected unless we cut off this power to issue warrants. If one trial justice is appointed in every town, and as many more as the increased ratio of population may require, I think that the police of the towns will be in safe hands. As has been suggested by another gentleman, I think that in the issuing of warrants, these justices lend themselves more to the gratification of malice and ill will, and spite of neighbor against neighbor, than to the promotion of the ends of justice in the trial of causes; and I am glad that the Convention has come back so nearly as it has to the legislation of 1850, when the act was passed in relation to trial justices. I believe that that was a good law, and had it lived until this time it would have brought about the good fruits which we are now seeking. As to the mode of electing justices of the peace, I have no particular choice.

But there is another objection of the gentleman from Salem in reference to their jurisdiction, which, I think, should be left to the legislature; and that is: that none of the justices should have jurisdiction unless one of the parties resides in the town for which the justice is elected. Sir, the gentleman forgets that justices are now county officers, having jurisdiction all over the county; and I am not aware of any evil ever having arisen from the fact that a justice of the peace can summon a man before him from another town in the county. How will the gentleman's suggestion operate in practice? In many of the towns there are not to be found men of the legal profession; and, unless justices have this power, and a man wishes a lawyer to conduct his case, or collect such debts as he has against his own townsmen, he must go to considerable additional expense in bringing a professional man from a distance. If the provision is limited to the county, so that no justice in one county shall summon a man from another county, I think the limit will be perfectly safe.

I hope, therefore, that the resolves will pass. I am not in favor of the amendment of the gentleman from Williamstown, for it seems to me that it would only be perpetuating and establishing what is felt to be a growing evil in the Commonwealth. I should have thought that nobody could have been so blind to the evil. In many towns of the Commonwealth we have nothing more than a perfect mockery of justice. The law, in consequence, has been brought into disrespect, and has been made the instrument of private malice and revenge, so that in many of our towns the very name of "justice's court" has become a stench in the nostrils of all respectable men; and I hope, if this evil cannot be remedied in any other way than by a constitutional provision, that we may have such a provision.

Mr. WALKER, of North Brookfield, moved that all farther debate on this subject cease at fifteen minutes past eleven o'clock.

The motion was agreed to.

The question was then taken on the amendment of Mr. Butler, and it was agreed to.

The question next recurred on the amendment offered by the gentleman from Williamstown, (Mr. Duncan).

Mr. MORTON, of Taunton. I think the subject embraced in these resolves is one of very great practical importance. We spent a good deal of time yesterday in the examination of this subject, and took a great many votes; but it was very apparent, then, that the subject was not sufficiently matured. Neither the Committee to which it was referred, nor the Convention, had digested the matter so as to arrange it satisfactorily; and, notwithstanding the anxiety of the

Convention to close their business, they thought it expedient to recommit the subject to a Special Committee, and I am happy to bear my testimony in favor of the labors of that Committee. I fear that the subject has not commanded quite so much attention on the part of the Convention as it deserves. I think that the multiplication of justices is felt to be a great and growing evil, and that the resolves reported by the Committee are well calculated to remedy many of the evils complained of. I approve of it from the beginning to the end; and yet I think there is one proposition in it which it seems to me did not command quite sufficient attention on the part of the Committee. In the first resolution it is provided, that "no trial justice shall act as such upon his ceasing to reside in the town in which he was elected." That provision is a very proper one; but it might so happen that a justice might leave the town in which he was elected, without any ability to substitute any one in his place; and the substance of the amendment I was about to propose is, that his removing from the town shall vacate the office, and leave somebody else to be elected. I move to strike out all after the word "Provided," in the first resolution, and insert:—

That every trial justice who shall remove from the town in which he was elected, shall thereby vacate his office.

Mr. BUTLER, of Lowell. I rise merely to say that that matter has been called to the attention of some members of the Committee since they reported, and they quite agree to it. The words used in the Report were not well adapted to the object in view, and, for one, I am much obliged to the gentleman from Taunton for the amendment he has suggested.

The amendment was agreed to.

Mr. HATHAWAY. I rise for the purpose of moving an amendment to these resolves, with the view of perfecting them, as far as they can be perfected, before the question is taken on the motion to strike out. I move to strike out the words "or the issuing of warrants in criminal cases," from the second resolution, in the last line. My reasons for making this motion are these: If the Convention will notice the first resolution, they will perceive that no town is to have more than one trial justice, unless it have more than two thousand inhabitants. There are a great many towns in the Commonwealth which border upon other States, many of which would only be entitled to one trial justice; and it seems to me, that in such cases there are many circumstances which might arise whereby the ends of public justice would be promoted by giving to justices of the peace the power to issue a warrant for the apprehension of the party, but would not give any justice of the peace the power to try the matter. Your trial justice may be absent from home, or sick, or in other ways be prevented from issuing a warrant in a case of urgency, and yet it may be a matter of necessity that a person should be arrested immediately. I happen to live but a few miles from the border of the State of Rhode Island, and with the present facilities for expeditious travelling, there would be nothing easier than for an offender to step beyond the boundary of the State. I think that no possible inconvenience could result to the community from granting to a justice of the peace the right and power to issue warrants. The great difficulty has been that, heretofore, trials before ustices of the peace have been anything but what trials ought to be, and their courts anything but a court of justice. Trials in justices' courts frequently have been such, that you would dignify them if you called them by no worse name than mock trials; and I have no question that, in many instances, and frequently, too, warrants have been by them issued because of the miserable small sum in the shape of fees they received therefor, thus gratifying their avaricious passions, if they have not been sometimes issued for the gratification of a still viler passion—that of malice.

It seems to me that the public, as well as many of the municipal communities, may find themselves surrounded with great difficulty, unless some officers besides the trial justices, have the right to issue warrants in criminal cases. When the question of the basis of the House of Representatives was under discussion, it was said that there were sixty-four towns containing less than one thousand inhabitants, and I have no doubt that there is at least sixty-four towns more, which do not contain two thousand inhabitants. If that is so, then you have at least one hundred and twenty-eight towns, more than one-third of the whole, which would have but one trial justice, and only one person, in each of those towns, having the right to issue warrants; and if, in the providence of Heaven, the trial justice in such towns should be sick, or if he should be absent, no matter how high the offence that may have been perpetrated, or with which a man may be charged, the individual charged with the commission of it may escape for the want of a magistrate who is authorized to issue a warrant for his arrest. Hence, I think it is proper to strike out these words.

Mr. HALLETT, for Wilbraham. I am sure my friend from Freetown, (Mr. Hathaway,) will not insist upon his amendment, if he will but look at it for a moment. This provision is the

most important amendment suggested in regard to the judicial department which is in the hands of justices of the peace. You have now the great principle, the interposition of the grand jury, by which no man can be charged for crime in your courts, unless his case has been heard beforehand—without his knowledge, to be sure—before the grand jury; yet you have now, and will have, if this amendment prevails, some eight or nine thousand persons who have it in their power, maliciously, or for other motives, privately, and unknown to any man, to issue a warrant by which a man may be taken out of his bed, and away from his family, and carried to prison, and there be confined until the trial justice can be found. And, unless you can prove that the justice issued the warrant maliciously or corruptly, the man has no remedy whatever. In that case, then, we shall be in the hands of every man who chooses to make a causeless charge against an individual, and your great principle, a presentation by a grand jury, the great bulwark of the liberties of the people, becomes entirely worthless; because, by this process of complaint, you can always charge any man you please with an offence—and to charge with crime an innocent man, is as bad for him, as is the conviction of a guilty man for him. If this provision remains, that great evil is taken away, and what is the inconvenience? It is almost impossible for cases to arise where you cannot get a warrant, and if you cannot get a warrant in season, the officer can detain a person until a warrant can be found. I hope the Convention will not change this most important provision.

Mr. HATHAWAY. One word only, in reply to the remarks of the gentleman for Wilbraham. I do not propose to permit these magistrates to try any causes, nor do I propose to so arrange it, so that a man upon being arrested by a warrant issued by a justice who is not a trial justice, shall be thrown into prison, to wait until the return or recovery from sickness, of the trial justice of the town where he happens to be arrested. I do not propose any such thing; for if the trial justice of one town is absent, another can be found in an adjoining town, not ten miles distant probably. I would not put a power into the hands of a justice which could be so abused; by no means. I merely would give the magistrate the power of issuing warrants, so that, where there is really an offence, he can arrest the criminal.

Mr. BARTLETT, of Boston. The clause under debate attracted the attention of some members of the Committee, and it is really a balance question.

[Here the President's hammer fell, the hour of eleven o'clock and fifteen minutes having arrived, at which the Convention had ordered that the question should be taken.]

The question first recurring upon the amendment offered by the gentleman from Freetown, (Mr. Hathaway,) it was put and decided in the negative, upon a division—ayes, 43; nays, 144.

So the amendment was rejected.

The question next recurring upon the amendment offered by the gentleman from Williamstown, (Mr. Duncan,) it was put, and decided in the negative.

So the amendment was rejected.

The question was then taken upon ordering the resolves, as amended, to a second reading, and it was decided in the affirmative.

The PRESIDENT. The resolves will take their second reading to-morrow.

Mr. BUTLER, of Lowell. As this question has been fully discussed and considered, I therefore move, that the rule requiring the resolves to take their second reading to-morrow be suspended, and that they take their final reading at this time, so that they can pass into the hands of the Revising Committee, who are now waiting for them.

Mr. LORD, of Salem. Have these resolves been read? I had supposed that we had done nothing, except to substitute this Report for the Report of the first Committee.

The PRESIDENT. The whole subject was referred to a Special Committee, and the Committee made their Report, and the Convention have acted upon it, and ordered it to a third reading. Now the gentleman from Lowell, (Mr. Butler,) moves to suspend the rule which requires their second reading to-morrow, and put them upon their final passage at this time.

Mr. LORD. I desire to know if the Standing Committee of this body, which had this matter under consideration, and of which the gentleman from Lenox, (Mr. Bishop,) was the chairman, did not report a series of resolves, and whether these resolves were not reported as an amendment to those? The amendment offered by the gentleman from Bernardston, (Mr. Cushman,) was under discussion, and after the first resolves were amended, they were referred, and afterwards the resolves which have been now considered, were reported as an amendment to the original Report of the Committee.

The PRESIDENT. If the gentleman from Salem will look at the Report, he will see that the whole matter was referred to the Special Committee, and the whole subject was reported back in a new draft. The question is now upon

the motion made by the gentleman from Lowell, (Mr. Butler,) to suspend the rules, and put the resolves upon their final passage.

The question was taken, and decided in the affirmative.

So the rules were suspended.

The question then recurring upon the final passage,

Mr. LORD, of Salem. I would inquire of the Committee who reported this, whether, if a vacancy in the delegation in congress should happen in the early part of December, we shall be obliged to wait until the next November, until a writ can issue for a new election, whether the vacancy is caused by resignation or otherwise? Now we have representative districts for members of congress, and we have provided that they shall be chosen by a plurality vote, and it was said, when that matter was under discussion, that the districts included representatives to congress. In my judgment it does include them. They are to be chosen by a plurality of votes, as we have provided in the Constitution; and, therefore, the manner of election is provided for, although the election itself is not strictly according to the terms provided for. But, whether it does or does not, I desire to understand it. The language of the resolution is, "whose election is provided for." If it were "whose office is created by the Constitution," then I should have no difficulty. But the Constitution does, to some extent, provide for their election, and when the plurality question was under consideration, every-body agreed that the word "district" covered representatives to congress. Whether it does or does not, I do not know. If it does not, it is all well enough, but if it does, then the resolve is objectionable.

I desire to ask the gentleman from Taunton, (Mr. Morton,) whether the effect of his amendment, which provides that the removal of a trial justice from the town in which he resides shall vacate his office, will prevent the completion, by him, of the trial of causes, or the finishing up of cases already commenced before him before his removal, and pending at the time of his removal? I should like to know what his construction of it is?

Mr. WHITNEY, of Conway. I rise to renew the amendment suggested by the gentleman from Freetown, (Mr. Hathaway,) on a previous reading of these resolves. I have not had the benefit of the previous discussion, but it seems to me that the amendment is an important one. I think you will find that there are one hundred and seventy towns in this Commonwealth, which will have but one man, according to this resolve, who will possess the power of issuing warrants. Now, Sir, suppose that it should happen—as in many cases it will—that a man whom the people elect as a justice shall not be disposed to issue a warrant; take, for instance, the violation of the license law, when a tavern keeper is the justice. Now, I think, upon every principle, there should be more than one man in a town of two thousand inhabitants, who has the right to issue a warrant. I would not increase the number of justices empowered to try cases, but I would have more than is here proposed, authorized in criminal cases, and empowered to issue warrants.

Then, again, look to the condition of the border towns of the Commonwealth. There, a man who has committed a crime, may run across the line before he can be arrested, if it should happen that the one trial justice is sick or absent for a time. There would be a necessity that he should be at home at all times, if he is the only man who can institute proceedings. There is no man who does not leave the town at some time or another; and in that case, a criminal, happening then to commit crime, could get out of the Commonwealth before he could be arrested.

There is a good deal in this amendment, though it did not meet with much favor before. It strikes me as an amendment of great importance, and one which should be considered before we pass these resolves. If you give to one man, and only one man, the right to issue warrants, it will introduce a new element into our elections. It will trouble us all over the Commonwealth. The question will be asked of a candidate, whether he will issue a warrant in this matter or that matter, before he can be elected a trial justice. This matter will return to trouble its inventors; and it becomes you, and it becomes me, and others, to consider this matter well before we act upon it. I undertake to say, that if you make this provision a constitutional one—and therefore out of the reach of the legislature for the next twenty years—you will greatly inconvenience the people of Massachusetts, and subject them to trouble in the execution of their criminal laws. It has been decided that in this Commonwealth a man has a right to defend himself against arrest, unless the officer making the attempt has a warrant to justify him. If a man pursues me for a crime, without a warrant or advertisement, I have a right to defend myself against arrest. In one case, I believe, life was taken, and the courts discharged the criminal on the ground that no warrant had issued. I would not, therefore, make it so difficult to procure a warrant. Now, it will be very difficult to obtain warrants in many cases, if this provision is adopted.

I therefore propose, that in this second resolu-

tion, all and after, and including the word "or," be stricken out. And I hope this amendment will prevail. The gentleman for Wilbraham, (Mr. Hallett,) says we have the grand jury. It is true, and we have the district-attorney. But that does not meet the wants of the case. There are many cases occurring which require an immediate arrest. Yet none of these officers are bound to arrest a man unless a warrant is issued. They can take the responsibility of arresting a man if they choose; but you cannot compel them to take the responsibility. I see no reason, therefore, why this power should not be committed to your justices of the peace. There has been no abuse of the power, heretofore, that I can learn; and I can see no good reason for taking the power from them. It is certainly important that more than one should be provided for a town of two thousand inhabitants. There are many cases where much inconvenience would be occasioned by this provision. Most of the towns in the Commonwealth, with a population of 2,000 inhabitants, cover a large extent of territory, and the appointment of more than one officer with the power of issuing warrants, is a matter of almost absolute necessity. I move, therefore, to strike out at the close of the second resolution the words "or for issuing warrants in criminal cases."

Mr. BARTLETT, of Boston. I was about to state upon a former occasion, that these questions were not lost sight of in the Committee to which this matter was referred; but the consideration which probably had much influence in controlling this action, was, that the proposition of the gentleman from Conway, when weighed and examined, must result in balancing convenience against personal liberty. The theory upon which this provision for distributing the powers of justices of the peace rests, is that you are to provide a class of magistrates who are, from their experience and more elevated character, better fitted for the trial of causes, and exercising judicial functions, than a large portion of the persons usually created justices of the peace.

Now, Sir, the case put by the gentleman from Freetown, (Mr. Hathaway,) is undoubtedly a very strong one in support of the argument founded on inconvenience. It is no doubt true that in cases where the party to be arrested is on the borders of the Commonwealth, or of different towns, he might escape before a warrant could be obtained for his arrest; but when you take into view the fact that your police force—your constables—are to a certain extent, authorized to arrest without a warrant, and bring the accused before a magistrate; and as, practically, in all cases of well ascertained guilt the officer incurs slight risk, which rarely deters him from action, I think the suggested defect is not of grave importance. At all events, cases of the character supposed, will be, I should suppose, unfrequent; and I ask gentlemen here, whether it is worth while, in order to meet such contingencies, to place this power of issuing warrants of arrest in the hands of all justices of the peace?—a numerous class of officers, many of them appointed by the governor by way of compliment, or for various reasons having but little connection with their qualifications by experience and judgment for the exercise of so delicate a power as that of arresting a man upon a complaint which they are not to try, and turning the case and responsibility over to another class of magistrates. I would rather this power should be delegated to a trained and less numerous class of persons than the great body of the justices of the peace; and so long as it shall be found, as I think it practically will, that escapes from process, or ultimate legal investigation, are unusual, I am averse to extending the power of issuing warrants beyond the class of persons selected and authorized by the proposition of the Committee.

Mr. WHITNEY, of Boylston. I want to say one word in reference to the amendment proposed by my friend from Conway, (Mr. Whitney). I think the reason given by him for striking out the words which he proposes to strike out, is the very reason why they should not be stricken out. The gentleman objects that in many cases it would require too long to get a warrant. Now, I think if they would only allow time for the parties to cool down a little, in many cases warrants would not be taken out at all. A case came under my observation where one man swore at another, and the other shook his fist in the first man's face. Well, Sir, without giving time for their tempers to cool, the matter was brought before a justice of the peace, and one man got his case; then it was brought before another justice, and the other got his case. Finally the matter was carried up to Worcester, and the judge threw it out of court at once, and neither got his case. The difficulty was that a justice of the peace was too convenient. They did not allow time for their tempers to cool off. If the parties were obliged to wait two or three days before a warrant could be issued, I think much difficulty would be avoided. I think the suggestion that of two evils we shall choose the least, by limiting the exercise of this power to the trial justices, is a good one; and I shall therefore vote against the amendment.

Mr. GOOCH, of Melrose. I think there is an objection to the resolution as it now stands, and at the same time I do not like the amendment of

the gentleman from Conway. I prefer giving the power of issuing warrants only to the trial justices, but I think there should be more than one trial justice in a town of two thousand inhabitants. In the first place, your trial justice may be absent; in the second place, he may be sick; and in the third place, he may be dead. So that there will be likely to be a great many towns where there will be no trial justice at all for a great portion of the year. I think, therefore, that it would be advisable to elect two trial justices in every town. There are a great many towns containing less than two thousand inhabitants, in which two villages are located four or five miles apart. In such cases it becomes almost a matter of necessity that a trial justice should be elected for each village. I propose, when the opportunity shall present itself, to offer an amendment that there shall be two trial justices for every town of less than two thousand inhabitants, instead of one. If this amendment be adopted, it will obviate the necessity of the amendment of the gentleman from Conway, (Mr. Whitney).

Mr. ADAMS, of Lowell. I move the previous question.

The previous question was seconded, and the main question ordered to be put.

The question being first upon the amendment of Mr. Whitney, of Conway, it was put, and the amendment was disagreed to.

The question then recurred upon the final passage of the resolves.

Mr. GOOCH. Must the question not be taken upon my amendment?

The PRESIDENT. The Chair did not understand the gentleman as offering an amendment.

Mr. GOOCH. I intended to offer one.

The PRESIDENT. The Chair cannot answer for the gentleman's intention.

Mr. GOOCH. Is it in order to offer an amendment at this time?

The PRESIDENT. It is not in order, the main question having been ordered.

Mr. GOOCH. I move to reconsider the vote by which the main question was ordered.

The PRESIDENT. The Convention ordered the main question to be put now, which main question extended first to the amendment pending, and then to the final passage of the resolves. The amendment has already been voted upon, and the Chair thinks it is not in order to move to reconsider the vote by which the main question was ordered. By general consent, however, the Chair will entertain the motion.

Mr. BUTLER, of Lowell. I object.

The resolves were then ordered to their final passage.

Mr. HALLETT. I now move to reconsider the vote by which the resolves were finally passed. I make the motion for the purpose of giving an opportunity for the alteration suggested by the gentleman from Melrose, (Mr. Gooch,) to be made. I think it is a very proper amendment, and should be made.

The PRESIDENT. The motion will go over until to-morrow, under the rule.

Mr. BUTLER, of Lowell. I move to suspend the rule, and that the motion to reconsider be taken up now for consideration.

The motion was agreed to.

Mr. BUTLER. Now, Mr. President, I am opposed to the motion to reconsider, for the purpose indicated. I am not able to see the great inconvenience of which the gentleman from Conway, (Mr. Whitney,) and his friends are afraid. In every county, except Dukes and Nantucket, there will be as many as from ten or twelve up to fifty or eighty, and I do not know how many more, of these officers. With that state of things, I do not see that anybody would have to go whaling. [Laughter.] You provide that there shall be at least one in every town in the State, and this will make at least three hundred and twenty-eight of these officers who are authorized to issue warrants. Then, besides that, every man in the Commonwealth, whether constable, or otherwise, is authorized to pursue, overtake, and seize, without a warrant, any man who may be guilty of a State Prison offence, and to hold him until he can find a trial justice.

But it has been said that if a trial justice refuses to issue a warrant in certain cases, that will be made a test question in his election. Well, Sir, suppose it is, if he exercises his power improperly, there is a power to punish him. I do not doubt, however, that cases may arise in which some inconvenience may occur; but there is another consideration. If the plan proposed by my friend from Conway, (Mr. Whitney,) were adopted, and the power of issuing warrants were conferred upon all the justices of the peace, it would lead to the multiplication of these officers, until they would come to be a nuisance. It would be in their election, as it has been in their appointment, every man wants another in his town, and the governor has gone on appointing them until there are as many as four thousand, and I do not know how many more, in the Commonwealth. That will be the difficulty. Now, I say if we have one in each town with the power of trying causes and issuing warrants, there is no occasion for any more, for those purposes. Sir, we want men to try causes of a more elevated character than the general run of justices of the

peace. We want men of capacity, and it has been ascertained by experience, as a general principle, that the fewer there are, the more elevated in character they are likely to be.

But, again, if you have two in a town, one will run in opposition to the other, like two stage lines. One will tell you that he is the cheaper justice, and that you can get your business done cheaper at his shop than the other one; and in my opinion, you will find in the end more inconvenience arising from multiplying these trial justices, than by limiting them in number. I hope, therefore, the motion to reconsider will not prevail for this purpose.

Mr. BRIGGS, of Pittsfield. If I were to vote for the motion to reconsider, I should do it for a different reason from that stated by the mover. I think the difficulty is, that we have provided for quite too many trial justices. I think if we had provided not more than a quarter as many, and had properly distributed them throughout the Commonwealth, that they would, as the gentleman from Lowell says, be much more likely to be selected on account of their qualifications and fitness for the office, and that such a system would be a much better one than that you have adopted. I cannot see the necessity for the great number of trial justices which is seen by some gentlemen. I do not suppose in one-half or three-quarters of the towns in the Commonwealth, there is a warrant issued from the beginning of the year to the end. But, if a man wants a warrant issued, what does he do? He goes to a lawyer and applies to him, and he institutes proceedings in the case.

Now, I think it is not only worth while to deprive the justices of the peace of the power of issuing warrants, but if I had my way I would limit the power still farther than it is done in the proposition.

The gentleman from Freetown, (Mr. Hathaway,) stated a very strong case in which inconvenience would arise from the number of trial justices not being greater. But, at the same time, he stated a fact in connection with it, which seemed to me obviated the whole difficulty. In the case mentioned by him where the trial justice was absent, he said that in all probability the trial justice in the next town would not be more than ten or fifteen minutes off, and that they would send and get him. So that after all a delay of only ten or fifteen minutes would be caused.

I think, however, the case stands very well as it is, and I shall therefore vote against the motion to reconsider.

Mr. KEYES, for Abington. I rise for very much the same purpose that I did the other day, because I could not sit and listen any longer without taking some part in the debate.

Since this discussion has been going on, my mind has been turned a little to the town where I reside—not the town I represent. We have there nearly 5,000 inhabitants, and out of those there are but very few persons who would take the office of trial justice. When the trial justice law went into operation, several years ago, a man was appointed of more than eighty years of age; but since that act was repealed, as well as before it went into operation, most of the trial business has been performed by the register of probate. Now, one of these two persons would most likely be elected to the office under this provision which we have just adopted.

Now, Sir, I believe they are both of them honest men; they would endeavor to transact the business which their duty required of them under this law according to their conscience; but they are no more alike than snow and soot; they are entirely opposite by nature, by education, and by ideas. There might be some difference of opinion on the part of these two persons on particular questions. I suppose a majority of the people would decide that the judge of probate, being the younger man, should be the trial officer. He has to go about the country with his green bag, and is often away from his home. What would be the state of affairs in case he should be wanted while absent? It appears to me that if there is any use in having any sort of officer at all—I do not, myself, know of any great use for any—but if there is any use for one, is there not use for two?

Mr. CHAPIN, of Worcester. I propose to vote against the amendment, and certainly if I were disposed to vote in its favor, it would not be for the reason given by the gentleman from Pittsfield. After the act was passed authorizing trial justices, ordinary justices of the peace were deprived of the power to try causes. But the act worked well, and if the chief magistrate of the Commonwealth had appointed one trial justice in every town in the Commonwealth, it would have remained upon the statute book to this hour. The excitement against the act arose from the circumstance, that parties were carried from the town where they resided to have causes tried at a distance from their homes, and the question naturally arose, whether they could not have a person nearer home qualified to try their cases. The answer was, that they could not. This proposition provides for what we want; it provides substantially, for a police court in every town. Take, for example, the city of Worcester, with twenty thousand inhabitants, and there is not a man

there authorized to issue a warrant, in a criminal case, except a police justice. This is a strong case. Take the city of Boston, and other places where they have police courts, and there they have no trial justices, nor any other magistrates authorized to issue warrants in criminal cases, and who complains? There is another reason why I would be opposed to the amendment, and in favor of the original proposition. If we have various justices in the towns, not qualified to try causes, they will not be prepared to do any business relating to criminal cases, which will bear the test of criticism or examination. If there was such a justice of the peace in the town where an offence had been committed, I would not go to him, but to a trial justice in the next town, who would of course be prepared for such business, and would prepare the papers in such a manner that they would stand the test before a higher tribunal. Therefore, I am satisfied that this resolution should be adopted.

Mr. FREEMAN, of Franklin, called for the previous question, and it was ordered.

The first question was on the reconsideration of the vote by which the resolutions were passed.

The motion to reconsider was decided in the negative.

*Conventions to Revise the Constitution.*

Mr. HALLETT, for Wilbraham, from the Special Committee on the subject of Conventions to Revise the Constitution, reported the following resolutions, with a recommendation that they do pass:—

1. *Resolved*, That it is expedient to provide in the Constitution, that

A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question: "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly; and thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect. And such delegates shall meet in Convention at the State House, on the first Monday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon, in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

2. *Resolved*, That whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth shall, at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Mr. HALLETT moved that the rule be suspended, and that the Convention now proceed to the consideration of the resolutions just reported.

Mr. GRISWOLD, for Erving. I would inquire whether it would not be better to have the resolutions printed, and take up other matters now? I fear that by a suspension of the rules we may delay the business.

Mr. HALLETT. If we suspend the rule, the resolutions can be read the first time now, and then be printed.

The motion to suspend the rule was agreed to.

The resolutions were read the first time, laid on the table, and ordered to be printed.

*Bill of Rights.*

On motion by Mr. LIVERMORE, of Cambridge, the Convention proceeded to the consideration of the unfinished business of yesterday, being the resolves in relation to the Bill of Rights.

The question being on ordering the resolves, as amended, to a second reading.

The second resolve having been amended, on motion of Mr. Dana, for Manchester, so as to read as follows :—

2. *Resolved*, That the Bill of Rights be amended by inserting, between the eleventh and twelfth articles, the following additional article, being identical with one now in another chapter of the Constitution, and which more appropriately belongs to the Bill of Rights, viz. :—

"VII. The privilege and benefit of the writ of *habeus corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months." And said writ shall be granted as of right in all cases where the legislature shall not especially confer a discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ.

*Imprisonment for Debt.*

Mr. STRONG, of Easthampton. If it is in order, I wish to offer the following as an additional resolution :—

*Resolved*, That the Bill of Rights be so amended, that no person in this Commonwealth shall be subjected to imprisonment for debt founded upon any contract, expressed or implied, unless in case of fraud.

Mr. STRONG, of Easthampton. Mr. President: The humanity of the age is against imprisonment for debt; but that it is the law of the Commonwealth, and is considered just, by many, admits of no doubt. If there was but one way to produce poverty, and that through a criminal channel, more, or even everything, might be said in favor of confinement; but almost endless are the ways by which men become poor. Does it not often arise from causes which no human sagacity can indicate, or care prevent? such as protracted sickness, loss of sight, limbs, failure of crops, death of stock, loss of property in the hands of agents, and often through the operations of swindlers and scoundrels; immense fortunes lost at sea, buried in a rolling ocean, which no human exertion could control; loss by sudden political changes, which put a stop to national as well as individual progress and prosperity. Yet in all these several misfortunes, the sufferer has incurred no guilt. Why, then, should a punishment from the law await him? Why should the vengeance of the law break in upon innocence? Whoever is willing to acknowledge that rational liberty is the choicest gift that Heaven has bestowed upon man, must also acknowledge that to be deprived of it, is the greatest evil. There is a spirit in man that induces him to break through difficulty, and live to triumph over all misfortune; and when the calamities I have mentioned have overtaken him, we behold him making head against them, with courage, and even cheerfulness; but the moment you insult his calamities, by adding contempt and imprisonment, it can never fail to break the force of a generous mind. He feels that these evils that have already fallen to his lot are enough—the voice of reason cries enough. Why, then, should the law interfere to render those calamities irreparable?

As a nation, we are unwilling to acknowledge the dominion of a foreign power over us, in the smallest degree. What, then, must be the feelings of an individual, when he finds himself a candidate for persecution and confinement, in the bosom of his own State, and by its own laws, without being guilty of any crime but that of being an unfortunate man? A short time after the close of the war of 1812, with England, there were more men confined in the jails of this Commonwealth for debt, than were made prisoners by the enemy during the entire war, from any one State in this Union. Thus, in the midst of peace, society was suffering an outrage worse than war. Again, if the debtor is poor, and can pay nothing, the creditor gets nothing, except it may be a malicious joy he may derive from the reflection that he is punishing a man as a criminal who is guilty of no crime. No, Sir; it seldom proves beneficial to the creditor, and has been the ruin of thousands of good and honorable men. It is no matter, Sir, whether he be confined one day or twenty; no matter whether his liberty is limited to a room ten feet square, or whether he have an acre of ground to walk upon; it is confinement, in both cases, and it is the principle I contend against. And, Sir, with this numerous class of unfortunate men, hunted by the officers of the law, and thrust into jail for misfortune alone, the sinews of exertion relax, the objects of time lose their allurements, creation turns to a vault, wherein joy is entombed.

It is a pause—a calm on the ocean of life when the mind sickens and expires. It would be slander on the aborigines of this country to call it a savage custom; for, as I read their history, there never was such a custom among them. But whenever those sons of nature are unfortunate in hunting, or otherwise, they do not send out one of their runners to catch and confine them; they have no civilized hell-hounds to prowl in the kennel of justice. No, Sir; far different is the practice of the red man of the forest; each one throws in his mite for the unfortunate among them, to

bring him up on a level with the rest, and to spare him the pain of feeling little among them; but, although not a savage practice, it may well be called a barbarous one, though nowhere to be found but where man pretends to love his neighbor as himself, and prays for the welfare of those who despitefully use him. The unmerciful practice of confining men in jail for debt, had its origin in the dark and unlettered ages of the world, and the cupidity of mankind has retained the practice to the present hour; but if this monstrous practice has been perpetuated for ages, is that a reason why it should never end? That men should be compelled by law to pay their debts—as far as lies in their power—is beyond dispute; their property ought all to be surrendered to their creditors, and disposed of in an equitable manner, except those articles which are necessary to the support of life, and a small freehold estate for the protection and shelter of the family.

Sir, he that takes up goods with the intention of never making a just remuneration, degrades himself to the character of a thief; and to send such a man to prison, at the expense of the creditor, until restored to his liberty by being allowed to swear that he is poor, is a punishment too light; but he that has been overtaken by the misfortunes alluded to—which, with due deference, may fall to the lot of any member of this Convention—instead of persecution and imprisonment, deserves patronage and protection, and to confine such a man at all, is an outrage upon justice and civilization. The question is not, whether men should be compelled, by law, to pay their debts; but whether, under our our laws, poverty shall be treated as a crime? for the law upon our statutes operates indiscriminately upon the fraudulent and unfortunate. Would it not, Sir, be more equitable to punish no man with the loss of his liberty for debt, than to couple the honest man and the knave together, and punish both alike? Sir, if only the idle and vicious were poor, and only the industrious and honorable were rich, the subject would appear in a far different light; but is wealth always acquired by honorable and legal means? Is it not often possessed in superabundance by the worst of men? Does not vast wealth often owe its origin to fraud or violence? May not a man be poor, and possess all the noble faculties of mind?

Successful actions are called wise ones, and, for the most part, they may be so; but to this rule there are many exceptions. Well matured plans often fail, while those constructed upon apparently less economy, succeed in human affairs. Can the human mind explore a future period? Is it in man that walketh to direct his steps? Is the race to the swift, or the battle to the strong, or riches to the man of understanding? These questions, Sir, are answered from a law that teaches a different doctrine from the law of imprisonment upon our statutes. The farmer that sows, knows not that he shall reap; the enterprising commercial man of Boston, when he embarks the mass of his fortune on board of his ships, knows not that they will reach their destined port in safety; the sea rages, and in a moment his fortune is gone. Is he a man of fortitude and integrity, does he possess a cool and sensible courage? Even if all this can be said of him, it gives him no power over the elements, and to this providential event he is bound to submit in silence. He has no right, as a Christian, a philosopher, or a man, to repine; for all a man has is under the dominion of fortune, and it is but for man to suffer the lot of humanity. There is nothing in this case imagined that does not apply to all unforseen events that await us on the journey of life, whether of minor consideration or not; and fortunate might this luckless victim of frowning fate consider himself, were his misfortunes to end with the loss of his property; but, Sir, they will not, for, under the law of imprisonment, a scene of persecution and captivity will open before him; at the beck of his creditors the prison doors will grate upon their hinges, and open their ponderous jaws to receive him into confinement; and what renders it intolerable is, that it is cast upon him without just grounds of legal complaint.

Again, various are the ways by which property is drawn from its rightful possessor by unjust means. The intriguing speculator often subtracts from the property of his credulous neighbor, by slow degrees. The unsuspecting man perceives his property wasting away, and though done before his eyes, knows not the cause, until ruin overwhelms him; and when poor and imprisoned, all must agree that the wrong man has gone to jail. But it may be observed that men are sometimes actuated by fear to do the things that are just; and when that fear, which the terrors of the jail excite, is removed, men would not make that exertion to pay their debts they otherwise would. Sir, neither the jail nor its terrors ever made a man rich, nor did they ever add one farthing to his ability to discharge his obligations; but when once he becomes poor and imprisoned, the imprisonment has a direct tendency to keep him poor,—it dampens his courage, and takes away all that dignity that belongs to self-respect. The law accepts of the body of the debtor—the oath is administered, and the execution is discharged

until property can be found. A strange kind of payment, Sir; for the debtor pays that which is dearer than life, and the creditor gets nothing!

It is true that the body cannot be sold but once for the same debt, but why sell it at all if it bring nothing? If it be a crime to obtain credit or contract debt, the creditor is a partaker of the guilt—if there is any guilt about it—for in all transactions where two are equally concerned, that are attended with evil consequences, which ought to suffer? Why does a man grant my request when I am ignorantly demanding my ruin? If he grant it knowingly, and suffers by the transaction, it will be but the natural and just consequence that should follow an inconsiderate bounty.

Should the debtor, from obstinacy, prefer to go to jail and there spend his property rather than to pay his just debts, by the adoption of my amendment he could not get there, and the poor man who has nothing to pay, would not be obliged to suffer the outrage. To punish a man for being blown out of his path by a hurricane, goes to overthrow every principle of humanity and justice. Confinement is not rendered just by the debtor's being admitted to his oath, nor legal by a statute which contravenes the fundamental and moral maxims of our government. All a man has, in this world, will he give for his life, and often as much for his liberty. A creature must be more or less than human, who can endure confinement and not feel it. Highly as men prize wealth and glory, they fade to nothing, when compared with freedom.

As summer produces no sunshine to the clouded mind, so in vain shall man look for joy amid the prison's gloom. It has been well said that the law of imprisonment is harmless to the rich, but terrible to the poor. In the hands of unprincipled men, it has ever been used as a successful engine to oppress and torture the poor. The deep depravity and fiendish wickedness of the law, will not allow the poor man the miserable privilege of swearing he is poor, without he buys it; and if he cannot command the pittance, he must lie in jail without limit, at the behest of the creditor. Between one and two thousand of the citizens of this State are annually obliged to suffer the outrage of being thrust into cells with felons, there to be educated in habits of demoralization, as a preparatory step to crime and State Prison.

The amount actually paid to creditors by the exercise of the privilege of imprisonment, is wholly insignificant, as official statistics show that not more than four per cent. upon the sums for which the commitments were made, were realized to the creditors. Sir, four-fifths of the States have abolished imprisonment for debt. Ten States have set us the glorious example of constitutional prohibition.

Sir, I envy no man the glory or happiness he can derive from raising his voice, here or elsewhere, to vindicate or perpetuate this remnant of barbarism, which requires nothing but justice from us to blot it from the statute book forever, and redeem the old Commonwealth from standing in the position of isolated barbarism—the "Shylock of States."

Sir, I believe that there is a principle of justice embraced in this amendment, which, if adopted, will brighten the hope and prospects of the unfortunate and despairing, and wring a formidable weapon from the heartless extortioner.

Mr. STRONG moved that when the question be taken, it be taken by yeas and nays; which was agreed to, on a division—ayes, 57; noes, 119—more than one-fifth voting therefor.

Mr. WARD, of Newton moved that the words "upon execution" be inserted after the word "imprisonment," so that as amended, the resolution would read as follows:—

*Resolved*, That the Bill of Rights be so amended that no person in this Commonwealth shall be subject to imprisonment upon execution for debt, founded upon any contract, expressed or implied, unless in case of fraud.

Mr. WARD said: Until there is a trial for fraud it is not ascertained whether there is a fraud or not, and, therefore, I want to provide that he may be committed upon a writ. I do not understand that the gentleman means to exclude him from being committed at all.

The question being then taken on the amendment offered by Mr. Ward, it was not agreed to.

Mr. FRENCH, of New Bedford. I am in favor of the amendment of my friend upon my right, to abolish imprisonment for debt; but I regret that he has called for the yeas and nays. I think it will be carried by a large majority, without taking the yeas and nays, and the calling of the roll will be an unnecessary consumption of time; and I therefore move a reconsideration of the vote by which the yeas and nays were ordered.

The question being taken on the motion to reconsider, it was agreed to.

The question then recurred on the motion of Mr. STRONG, that the yeas and nays be ordered on the amendment proposed by him; and upon a division there were—ayes, 47; noes, 165—so the yeas and nays were again ordered.

Mr. KEYES, for Abington. Mr. President: I hope, Sir, that this amendment will prevail. It will at least show a good disposition upon the part

of the Convention if they adopt it, whether it shall practically avail much or not. I know that there is an impression existing among nearly all the inhabitants of this State, that there is no such thing as imprisonment for debt unless some dishonesty has been proved; but still, upon looking over the annual return of the number of persons imprisoned, we find that a vast number have been imprisoned for debt. I was sorry that the speech of the gentleman from Easthampton, (Mr. Strong,) was not more distinctly heard by the members of this Convention; for I believe if they could have heard it, it would have produced a powerful effect. The gentleman read some statistics, and as I have the advantage of him in one respect, that of having a voice which can be better heard, perhaps it may be of some consequence that I should repeat the number of persons who have been committed for debt. I hold in my hands, through the kindness of that gentleman, a long and carefully prepared table, exhibiting the number of persons who have been committed to the Boston Jail for debt during the last seventeen years. I will not go into the details of each particular year, but the whole number is 9,404. The whole number who were confined for debt in all the prisons in the Commonwealth in the year 1852, was 1,362. But, Sir, without reading these dry statistics any farther than to give a general view, allow me to refer to one statement made by that gentleman, which ought to have a great influence, as it has a direct bearing upon the whole of this matter.

Out of something like five thousand whom he said were imprisoned for debt in Suffolk County in eight years, only about six per cent. of the demands were collected by that process. I have no doubt, Sir, that more than double that sum was expended in the prosecutions. Now I am not only in favor of the amendment the gentleman has proposed upon the ground of humanity, but because I believe it to be a good thing if it were to be considered simply as a matter of policy. I am also in favor of it on another ground. I hope the time will come when all laws for the collection of debts will be abolished. This idea is, I confess, somewhat startling, but it is beginning to be regarded with more favor than it was a few years ago, when first announced. I believe that it would be a matter of economy and wisdom, not only in this State, but throughout the world, if the people should be compelled to trust to the honor of men, instead of the law, for the collection and security of debts. The first good effect that would be produced by the adoption of such a measure, would be to restrain the enormous and ruinous credits which are now a curse to the people, greater than any one thing else, except it be the use of intoxicating drinks. The disposition to run in debt, and the consumption of the purse which grows out of it, is the great evil of the present state of society. Any provisions that will tend to restrain it must be salutary; and, therefore, I believe that this amendment will do much good and no damage to anybody. It may sometimes restrain a man in the exercise of his passions, when, perhaps, they are reasonably excited; but all such will thank you for it, at any time after his passions become cool.

If a man knows that he has no power to put any person in prison because he refuses to pay a debt, it will be a caution for him not to trust men whom he does not know to be trustworthy. The effect of this will be to secure him against loss. Under the present law, if he thinks a man can pay who refuses to pay, he may sometimes feel justified in pursuing him with vengeance, while at the same time, if he should be restrained, he would, twenty-four hours afterwards, think better of it, and would be thankful for the law which restrained him. In nine cases out of ten, the creditor is the greatest sufferer, pecuniarily, of the two, under the operations of the present system.

Sir, we have the credit, all over the country, of having abolished imprisonment for debt, and, at the same time, we imprison nearly fifteen hundred persons annually, in our jails for debt. It seems to me to be a kind of hypocrisy, for us to have the credit of doing what we don't do. I do not know much of the detail of the laws now in force, in relation to this subject; I never had much experience in being sued for debt, and I never much helped anybody else to experience on the subject. I would not do it. I would much rather take fifty cents on a dollar, of a debt, if I could get it, than to sue any man for debt; and I think it would be for the pecuniary interest of every-body in the Commonwealth, if that principle could be universally adopted. I believe that the effect of the adoption of the amendment would be to benefit both debtor and creditor, and the only trouble or mischief that would grow out of it would be, that it might prevent what would, in many cases, be only a justifiable exhibition of vengeance on the part of the creditor. This might go against his grain at the time, but he would be glad of it afterwards, for it would save him a good deal of expense, trouble, and difficulty. I think, among all the acts of this Convention, we have not done a great many things that are to be classed among real humanitary reforms; and it seems to me that it is the duty of Conventions that are held only once in twenty

or thirty years, to do something to show that the people have advanced in civilization, and that they are doing something to sweep away that barbarism which is part of the nature of mankind in the early stages of society—that we are doing something by degrees, to raise ourselves to the standard of a higher and purer civilization. The adoption of this amendment will give an indication that this Convention is animated by such a spirit; and it will be of some influence in conciliating the good wishes of the people in regard to the result of our labors here.

Mr. HILLARD. I know that the Convention are not in the mood for long discussions, and I shall only speak a moment or two; but it seems to be no more than fair that some one member of the Committee on the Bill of Rights, should defend their own work. This proposition was under discussion in that Committee, and was considered by them, and it was deemed unadvisable to propose it for the action of the Convention. The law stands now, that no person can be arrested on *mesne process*, or any action founded upon contract, unless the person who has the claim, or some one upon his behalf, makes oath that the debtor is about to leave the Commonwealth. A person can be arrested on an execution; but, besides that, all persons arrested may discharge themselves by giving bail; it is made the duty of the officer when he arrests a debtor, whether on *mesne process* or execution, to communicate to him the provisions of law by which he may discharge himself, on taking what is called the poor debtor's oath, within twenty-four hours.

If he takes the poor debtor's oath, he is only confined for twenty-four hours, and that is as short a time as it is possible to give notice to the creditor, and make arrangements with the magistrates. The only possible hardship, therefore, is, that sometimes a man may lie in prison twenty-four hours, and that such hardship may sometimes result from vindictive motives on the part of the creditor; but, after all, as one gentleman said this morning, it is a balancing of conveniences. I have been about twenty years in the practice of the law; and for many years, as master in chancery, I administered the insolvent law. I have, therefore, had some opportunity of comparing together the two great classes into which society is divided—the debtor and the creditor. The whole current of sympathy has been in favor of the debtor, and nobody has said anything in favor of the creditor. In my opinion, the creditors, as a class, deserve the sympathy of the community quite as much as the debtors. There is a large class of men, and not unfrequently of women, too, struggling for subsistence, keeping boarding-houses, or small shops, who are obliged to give credit. It is of no use to say that they should not; they must do so. It is our usage and custom; and there is a great number of debtors—reckless persons who have property, or who, by a little economy or sacrifice, could pay their debts; and, if called upon, either to pay their debts or to take the poor debtor's oath, they are put into the position of either making the payment or committing perjury. I do think, therefore, that if you take away this power of coercing a debtor in behalf of the claim of a poor but honest creditor, you introduce a very great evil—one which, I think, will be found to operate to the injury of many well-deserving members of the community. Regarding the balance of conveniences and inconveniences, I think you had better let the matter stand as it is.

Mr. STRONG. I wish to modify the amendment by substituting the word "inhabitant" for the word "person." I think that will better answer the object I have in view.

Mr. HALLETT. I merely wish to say that with that amendment I think it is perfectly safe to ingraft this provision upon the Constitution. It is an amendment which appears to me to be in accordance with the spirit of the times, and it shall have my vote.

Mr. HALE, of Bridgewater. It seems to me that we are likely to act with more haste in this matter than is judicious. Let me suppose a case. Suppose that I owe any man a thousand dollars, and not being either able or willing to pay, and I pack up what I have and direct my steps to one of our wharfs, and take passage for California; is the creditor in such case not to have the right to arrest me?

Mr. STRONG. Upon reflection I think I will withdraw the modification I suggested a few moments ago.

Mr. LORD. I move to amend the amendment by striking out the words "on any contract, express or implied," and insert the words "upon any civil process."

Mr. STRONG. In the amendment I have proposed, I beg to say that the language I have used is that which is found in the Constitutions of ten of the States of this Union; and I supposed that under such a state of facts, it would not be inappropriate to insert it in the Constitution of Massachusetts.

Mr. LORD. My reason for offering this amendment, is, in order that if we adopt this principle at all, we should adopt it entirely; so that the civil proceedings of one party against another, in the way of contract, should not con-

stitute a foundation on which either party should put the other into jail.

Now, there are very few contracts that may be entered into in the Commonwealth of Massachusetts, which may not be converted, by a certain process, into a tort, and being converted into a tort, the imprisonment for debt will remain. Let me put an illustration. There is nothing more generally understood in this Commonwealth, than that females are not liable to imprisonment for debt; yet the very same provision which says this, also says that they shall not be imprisoned for debt, except when they are charged as trustees on a process of foreign attachment. If you want, therefore, to put a woman in jail, all that you have to do is, to sue somebody whom she owes, trustee her for a debt which she cannot pay, and then the execution runs against her body. Let me illustrate a little farther. Say that a female is indebted to me and cannot pay. I cannot put her in jail for that debt; but I am indebted to the gentleman for Marshfield. He sues me, and the woman who owes me is trusteed by him for the amount of her debt to me. But, she cannot pay that debt to him, any more than she could to me. She can no more pay it as trustee for the benefit of another, than she could to the original creditor; and under such circumstances, by the laws of Massachusetts, to-day, she is liable to imprisonment; and I have known people try to use that process for purposes of imprisonment. Indeed, I can safely say, that I never knew any one who was aware of the process, who was not willing to use it for that purpose.

Now, perhaps nine-tenths of all the cases of tort between parties, are substantially such cases as arise on the obligations of contracts; and when one party recovers a judgment against another for a tort, unless he shall have done something which shall render him amenable to the criminal law of the Commonwealth, I see no more reason why a debt created in that mode should give authority for one man to imprison another, than if it was created upon contract. And, in reality, there is not now any substantial difference in the law between tort and contract; and some of the cases of contract are so little distinguishable from cases of tort, that the new practice in court provides, that if a plaintiff cannot tell whether it is a tort or a contract that he is going to sue upon, he may declare twice, once on tort, and once on contract, and put at the bottom of his declaration that he does not know which it is, but may sue for the same thing in both ways. Now, if we declare the principle at all, it seems to me to be proper that we should declare it to the fullest extent; and when one party has obtained a judgment against another, to be satisfied by money, that he should not have the power to imprison him. That is the only limit we can put to it. It seems to me that if we do not go to this extent, we only half do our work, if we adopt a principle to apply in cases of contract, and not of tort.

Mr. BUTLER, of Lowell. Perhaps I do not understand this matter, but if I do, I should be sorry to suppose that there would be any danger of its passing through this Convention. I am content, for one, that where men make contracts, and where a thing is a matter of bargain between two men, they should understand that if they make such a contract, they shall not enforce it by arresting and imprisoning the person of either the one or the other. That is one thing to be considered; because with this provision before them in the Constitution, they can make a contract or not, as they please. But when we come to the amendment of the gentleman from Salem, that imprisonment shall not lie for debt in any civil action, I am not willing to go for it.

The gentleman has stated a rather fanciful case —that of trusteeing a woman for a debt. I have been in the practice of law for at least ten or twelve years, and have never known a woman imprisoned under such circumstances, and should like to see or hear from the gentleman who ever did. If there be any one here, I will sit down for him to speak and tell the case. [Mr. B. here paused for some seconds; but there was no response.] Sir, we represent this Commonwealth here pretty well; and if a woman had been put into jail under such circumstances, the fact would not have been hidden under a bushel. The case put by the gentleman from Salem, therefore, I cannot but regard as merely fanciful.

But that is not all the trouble. That gentleman proposes that whatever a man may do under which he can escape punishment in the State Prison, the party whom he may swindle shall be entirely beyond all legal remedy.

Mr. LORD. Not quite, Sir. I say that if you put anything in the Constitution in reference to this subject, it should be a provision to this effect—that a man shall not be put in jail unless he has violated the criminal law of the Commonwealth.

Mr. BUTLER. So I understand the gentleman at least. Let us take two or three cases. Suppose that a man comes and steals my horse, and he is put into prison for the felony. He goes to prison and has, it may be, any quantity of money in his pocket, and I want to get redress. He can take his bank bills and shake them in my face and I have no redress.

Again, take another case. Suppose that a man seduces a father's daughter, and all the remedy he can get is against his person; for when sued he may put his property into the hands of a third party, or secretes it, or turns it into money; and thus he may stand in a court-house and shake his money in that father's face, and say, "True, you have got your judgment, but what are you going to do?"

Mr. STRONG. If the gentleman from Lowell will allow me to say a word here, I would remind him that the law always presumes a man to be innocent until he is proved guilty, and a man should not be charged with having fraudulently put away his property until it is satisfactorily proved. When that is proved, he would then be subject to the operation of the statute law, and might be sent to jail on the ground of fraud.

Mr. BUTLER. Let us see about that. It is not quite so certain.

Mr. STRONG. Not for debt, but for fraud.

Mr. BUTLER. But let me go on. Say that I do not owe anybody a dollar to-day, I can then go on and dispose of my property as I please. Then I am sued for seduction; and I stand up in court with the bills in my hand; and if the amendment proposed by the gentleman from Salem passes, I should like to know what you are going to do about it? Put me in jail? That you cannot do. Get the money? No, you cannot do that either, for it is in my pocket. What fraud is there about that? It is simply a disposal of my property when I had a perfect right to do so. Or say that a man comes and takes the coat off my back, and says it is his coat. I sue him for it, and get an execution against him. But he replies, "I have the coat upon my back, and what are you going to do about it?"

But the difficulty I find, is this: that this is a matter of simple legislation. I am against imprisonment for debt as a matter for the enforcement of a contract; every man can understand that; but when a man does me a wrong—when he chooses to do me a wrong, knowing that so long as he has no property he is safe in doing it, if there is no way of getting hold of his person, that is another thing. A man knocks me down, beats me, tramples upon me, and when he gets through, I may punish him through the criminal law or not, as I please. But if there was no way of getting hold of his person in that way, why, what remedy have I in prosecuting? He would say to me, pay your lawyer and go home. I do not know but it would be all right; but I should not like it.

The gentleman's proposition is too radical for me. When he goes much farther than I do, I do not know how to follow him. When I get lost, that is one thing; but when some one of the stand-bys gets lost, the hold-backs are all gone. There is the difference between the gentleman and myself. My friend from Salem, (Mr. Lord,) is so conservative, usually, that when he goes for a radical doctrine, I begin to think there is something in it. He proposes to take away imprisonment in cases of all torts. If you do, that amendment would leave men without remedies. But if the Convention are ready for it, I am content. I wanted to say sufficient to put myself right, because I shall vote against it; that is, to imprisonment for debt on matters of contract, I am opposed. As to imprisonment in matters of tort, I am in favor of it; because it is the only mode which, in many cases, you can avail yourself of to collect a debt. Now I agree, that in nine cases out of ten, in matters of contract or debt, by having the power of putting a man into jail you get no pay. I was going to say that in ninety-nine cases out of one hundred, but I will only say in six cases out of ten, for fear of being put into jail for a matter of tort, a man will pay.

Mr. ALLEN, of Worcester. I think it likely that the proposition of the gentleman from Southampton may need amendment; and as there will be an opportunity to consider it before it passes another stage in its progress, gentlemen will have an opportunity in the mean time to give it consideration, and perhaps be able to suggest such amendments as will prevent it from doing any mischief. For my own part, I will take the proposition for the present as it has been presented by the gentleman from Easthampton. As the opportunity has been afforded to express opinions upon the general principle, whether imprisonment should be allowed, I am willing and ready to vote for the great principle that poverty shall not hereafter be classed with crime. I therefore prefer the proposition now without the amendment, and take opportunity, before the case comes up again, to consider it, and propose any amendments which may be needed; so that the principle, benevolent in its character, shall not be productive of mischief.

Mr. HALLETT, for Wilbraham. Let me say one thing which gentlemen understand as well as I do. The distinction between actions of tort and actions of contract, is this: that in action of contract there is an agreement, or understanding, of some sort, between the two parts. They trade, they confer together, and one of them gets the other's property by his consent. In actions of tort, one man takes another man's property without his consent, or injures his property, or destroys his reputation, all without his consent.

That is the distinction. Wherever two men get together in any relation in which they trust each other, and where the party owning the property has the right to refuse it, there should be no right of imprisonment for debt. But where a man takes another's property without his consent, or cuts down his trees, destroys his property, or commits a malicious mischief, that is another case.

Mr. LORD, of Salem. I desire again to be exactly right about this matter. The position which I propose to stand upon, is this: that punishment for offences committed, is the prerogative of the government; that it is not policy to put the power of punishment of one man in the hands of his neighbor. That is the general principle upon which I stand, and I would no more give that power to one man—the power to punish another, because he was mistaken in a controversy of tort, about a piece of property—than I would give it to him to use, because the other did not pay a debt.

Now, Sir, there has not been a single case mentioned, not one, but what, if this was made a constitutional provision, would be provided against as a matter of fraud. Not one. When the gentleman says that a man will hold bank bills in his hands, and shake them in his face, and say you shan't have them, why, if there is an obligation to pay a debt, and the man has the bills to pay it, he cannot do it. Because that act is a fraud, one which the legislature will define to be a fraud, and every case which has been put by way of illustration, if it is not a fraud now, will be made a fraud. The gentleman says that when a man is guilty of the commission of malicious mischief, I could have him punished, and the law punishes him—would have him punished twice. The Commonwealth already punishes him by complaint and trial for malicious mischief, and in that very case which he has put, the party is liable to imprisonment in the State Prison. Now, will you say, that besides the public remedy by confinement in State Prison, the party shall have a remedy, and keep the man in State Prison until he rots? Will you let the public punish, and let the individual punish also? Because, if you allow the party to be sworn out by proving that he has no property, then you admit it to be a mere simple civil obligation.

Now, Sir, I am charged with breaking loose, and going farther than every-body else. Well, Sir, when I come to a principle which I think is right, I am very apt to follow that principle where it leads, without stopping to consider whether it would be safer for my party to go so far, and then chop around and say it is not safe to go any farther. Wherever I find a principle which I believe to be a just and true principle, I adopt it, wherever it is practicable to do so. Well, Sir, I really think there is humanity in this provision, and I only wonder that the reformers have not gone farther and proposed anti-capital punishment. I say, Sir, I am very happy, indeed, to express my gratification at the prospect of the majority doing a humane thing; but to show that I have no disposition to interfere with it, I withdraw the amendment which I proposed; and I withdraw it for the reason suggested by the gentleman from Worcester, (Mr. Allen,) that in the next stage there would be an attempt to mature it.

Mr. HALLETT. I move to strike out the word "persons," and substitute in lieu thereof the word "inhabitants."

Mr. HILLARD, of Boston. I would ask whether we have the right to make a provision which shall be applicable to inhabitants, and not to transient persons who may be here, and whether that does not come in conflict with that clause of the Constitution of the United States which gives to the citizens of all the States the same rights, &c., in every State?

Mr. HALLETT. As it reads now, it is that no "person" of this Commonwealth, &c. Now, I do not know what that means.

Mr. STRONG, of Easthampton. I will modify my amendment, and substitute the word "in" for the word "of," and that will remove the difficulty.

Mr. HOPKINSON, of Boston. I think, Mr. President, that the Convention will act inconsiderately, if they pass this without farther discussion. I understand that it is the intention of some gentlemen to consider this matter more maturely in the next stage; yet it seems to me not amiss to throw out some considerations, affecting the main question, at this stage. I think the gentleman for Abington, (Mr. Keyes,) put the question upon the right ground. If the provision is defensible in any way, it is defensible upon the ground that it is not expedient to take any steps to enforce a debt against a person in any form whatever. I will go farther—and I think his proposition went farther—to take any steps to enforce a debt against property, because to say that you will not enforce it against the property except when it is visible and open, is about the same thing. The proposition, therefore, is to say, that in all cases founded upon contract, there shall be no provision by which a debt can be enforced. The distinction between cases of contract and cases of tort, has been pointed out in its broader shades; but the equity of the case is about the same, in a large number of cases.

They shadow into each other until you can hardly tell which is contract, and which is tort, and it frequently depends upon the lawyer drawing the pleadings, whether it sounds in tort, or in contract. For instance, if a man goes to a poor woman and boards with her, and gets his living from her, and then refuses to pay the bill, he does a great wrong, but it is not a fraud; and, let me say, in reference to a remark made by another gentleman, the legislature cannot make it a fraud; because, when we are framing a Constitution, we use language as it is, and the legislature cannot, by giving a new definition to the words we use, say that the meaning is different from what we intended.

Another man, by accident, takes your umbrella, thinking it is his own, but, by mistake, gets your property, and that becomes the foundation of an action of trespass or trover, and the remedy can be enforced by imprisonment of the person. Yet I submit, there is no great difference in favor of the last case over the former. The former is, in fact, much more deserving of imprisonment. The distinction between the case founded on contract, and the case founded on a claim of property, where the defendant honestly supposed it to be his own, is one without essential difference in morals or equity, and yet you give a remedy in the one case against the person, and in the other only against the property.

But I pass by all these distinctions, and ask whether it is expedient and right to say that you will take no means whatever to force a man to deliver up his property to pay his debts, unless you can seize upon the property specifically? And I think all that the gentleman from Lowell, (Mr. Butler,) has said in relation to claims founded on tort, may be said here. A man who owes a debt, with his pockets full of money, and every means in the world to pay it with, can shake that money in your face, and say, I will not pay you. A debtor is going out of the State, having with him ten thousand dollars, visible to your eyes, and yet you cannot take it, you cannot arrest him. You will say that perhaps the law will provide that, in case a debtor is going to depart from the State, you shall have some means to arrest him. But suppose it were so, unless the man was fool enough to tell that he means to avoid the payment of the debt by running out of the State, you cannot, ordinarily, get hold of him. You cannot swear that you have reason to believe that he is going away, for you know nothing about it, and you cannot enforce the payment of the debt. The answer to this is, that the creditor, by consenting to the credit, does the wrong to himself; because he need not to have trusted him. There was no necessity of creating a debt, and he need not have subjected himself to a loss. He might have required payment in advance. That is easily said, but every man knows that such a provision will not change the course of business. Every man knows, for instance, that when a person goes to board with a poor woman—who gets her living by feeding others, and makes but little at that, and perhaps nothing—he does not deposit a pledge in advance, and will not do it. So in most cases where a day laborer engages to work. It is a mockery to say such persons, or small traders, need not give credit. The every-day course of business compels them to give it.

My friend from Lowell knows that there are hundreds and thousands of persons among his constituents, who live in that way, and who would have no means to collect a debt in the world, without some provision by which a person could be detained until he disclosed his means of payment. It is not, therefore, a premium upon honesty. It is no boon to honest poverty that you propose. It is not a provision which can benefit honest men, or poor men; but it is a premium upon rascality. It is a boon to that class of persons who mean to get their living from the sweat of other brows, without laboring themselves. That is the amount of it.

But, it is said, that unless this provision is made, you declare that poverty is a crime. I deny it. The mere fact that a person is detained and held until he discloses his means of payment, is not to charge him with any crime. He need not be restrained in any case as the law now stands, according to my understanding of it, unless it is in the case where he is about to run away without paying his debts, or unless the creditor, by his oath, declares his belief that he is. All the debtor needs, is to go into court, which he can do at any time, without costing him anything, or with costing him next to nothing, and take the poor debtor's oath. When he has done that, he cannot be restrained for any such cause. No process can then issue against his body, before judgment, that is on *mesne process*, if he can only be restrained upon the oath of the creditor that he is about to escape. So that the only case where a man can be imprisoned for debt, is simply until he makes his oath that he has no property, or that he has given it all up; and he can make that oath immediately. It is simply a cheap and effectual bill of discovery. Without such a provision, any dishonest debtor can cover up or conceal his means of payment, and defraud honest creditors.

I submit, therefore, that it is not worth while to take away this only remedy which small dealers have of collecting their small bills from persons

who are disposed to escape without paying them. I do not believe that such a provision would receive the sanction of this community.

But, Sir, I do not expect by any argument of mine, to change the action of this Convention. I only desire to protest against the adoption of a measure like this, for I believe it is one of which we shall repent, and one against which a majority of the people will protest.

I am for having every person escape with his liberty who will disclose his property and deliver it up to his creditors. I can see no stain put upon his character by detaining him until he has an opportunity of doing so, or of taking the poor debtor's oath. I repeat, that such a provision will act as no restraint upon those who are disposed to be honest. It is only a restraint upon those whose intention it is to commit a shameless fraud, by concealing their property, and refusing to pay their debts. It makes no charge upon anybody else. It is entirely a misstatement of the case to say that it charges poverty as a crime. It makes no imputation upon poverty.

I see no difference in principle, between this provision as it now stands, and that proposed by the gentleman from Salem, (Mr. Lord). There are cases for seduction, for slander, or for outrageous frauds against property, which are in the nature of crimes, and widely different from debts of contract; for such cases, imprisonment is an appropriate punishment. But the majority of actions of tort are founded on claims of property, and should be collected in the same manner as claims for debt. They shadow into each other until there is really no distinction between them. Take, for instance, the case of a man who hires a horse to go twenty miles. That would be a contract. But, suppose he had occasion, when he arrived there, to go a mile or two farther; he knows that the owner of the horse would not have made the slightest objection, if he had asked to hire the horse to go those two miles, and he will not hesitate to drive or ride the horse there; but when you come to the matter of law, he is liable for the horse, for the distance for which he hired him only, as a matter of contract; but if he drives him two miles farther, he is liable to an action of trover or trespass, yet there is no moral distinction between the two cases. It is a mere technical distinction. In many, if not most cases, it is a distinction without a difference; while in other cases, the distinction is wide and marked. Leave the legislature, then, to make the appropriate distinction. It seems to me not worth while to perpetuate forever, in your Constitution, a distinction so unfounded and absurd in its general application.

Mr. BREED, of Lynn. I move the previous question.

The previous question was seconded, and the main question ordered to be put.

The question was first upon the amendment, on which the yeas and nays were ordered, and being taken, the result was—yeas, 120; nays, 45—as follows:—

YEAS.

| | |
|---|---|
| Allen, Charles | Hobbs, Edwin |
| Allis, Josiah | Howard, Martin |
| Alvord, D. W. | Hoyt, Henry K. |
| Atwood, David C. | Hunt, Charles E. |
| Baker, Hillel | Huntington, George H. |
| Beal, John | Jacobs, John |
| Blagden, George W. | Kellogg, Giles C. |
| Boutwell, Sewell | Keyes, Edward L. |
| Bradford, William J. A. | Kimball, Joseph |
| Breed, Hiram N. | Kingman, Joseph |
| Briggs, George N. | Knight, Jefferson |
| Bronson, Asa | Knight, Joseph |
| Brownell, Joseph | Knowlton, J. S. C. |
| Buck, Asahel | Knowlton, William H. |
| Bullock, Rufus | Ladd, Gardner P. |
| Burlingame, Anson | Lawrence, Luther |
| Butler, Benjamin F. | Lawton, Job G., Jr. |
| Cady, Henry | Leland, Alden |
| Carter, Timothy W. | Loomis, E. Justin |
| Chandler, Amariah | Merritt, Simeon |
| Chapin, Daniel E. | Morton, Elbridge G. |
| Churchill, J. McKean | Morton, Marcus |
| Cogswell, Nathaniel | Morton, Marcus, Jr. |
| Copeland, Benjamin F. | Morton, William S. |
| Crane, George B. | Newman, Charles |
| Crittenden, Simeon | Nute, Andrew T. |
| Cross, Joseph W. | Ober, Joseph E. |
| Dana, Richard H., Jr. | Oliver, Henry K. |
| Dean, Silas | Packer, E. Wing |
| Denton, Augustus | Partridge, John |
| Earle, John M. | Pease, Jeremiah, Jr. |
| Eaton, Lilley | Penniman, John |
| Edwards, Elisha | Perkins, Jesse |
| Ely, Joseph M. | Phelps, Charles |
| Fay, Sullivan | Pierce, Henry |
| Fisk, Lyman | Pomroy, Jeremiah |
| Fiske, Emery | Pool, James M. |
| Freeman, James M. | Richards, Luther |
| French, Charles A. | Rogers, John |
| French, Rodney | Schouler, William |
| Frothingham, Rich'd, Jr. | Sheldon, Luther |
| Gilbert, Wanton C. | Stacy, Eben H. |
| Giles, Charles G. | Stevens, Joseph L., Jr. |
| Giles, Joel | Stiles, Gideon |
| Gooding, Leonard | Strong, Alfred L. |
| Goulding, Dalton | Sumner, Charles |
| Green, Jabez | Sumner, Increase |
| Hadley, Samuel P. | Taber, Isaac C. |
| Hallett, B. F. | Taft, Arnold |
| Harmon, Phineas | Thomas, John W. |
| Hawkes, Stephen E. | Tilton, Abraham |
| Hayden, Isaac | Turner, David |
| Hazewell, Charles C. | Tyler, William |
| Hersey, Henry | Wales, Bradford L. |
| Hewes, William H. | Wallace, Frederick T. |
| Hindsdale, William | Walker, Samuel |

Ward, Andrew H.
Wheeler, William F.
White, Benjamin
White, George
Whitney, James S.
Wilbur, Daniel
Wilson, Henry
Wilson, Willard

NAYS.

Abbott, Alfred A.
Adams, Benjamin P.
Allen, Parsons
Bartlett, Russel
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Geo. S.
Brown, Artemas
Cooledge, Henry F.
Davis, Solomon
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Gooch, Daniel W.
Goulding, Jason
Hillard, George S.
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Jackson, Samuel
Kendall, Isaac
Knight, Hiram
Knox, Albert
Kuhn, George, H.
Lincoln, Abishai
Miller, Seth, Jr.
Morey, George
Park, John G.
Parker, Samuel D.
Parris, Jonathan
Peabody, Nathaniel
Perkins, Noah C.
Rantoul, Robert
Richardson, Daniel
Richardson, Samuel H.
Ross, David S.
Thayer, Willard, 2d
Tilton, Horatio W.
Wallis, Freeland
Wilson, Milo
Winslow, Levi M.
Wood, Nathaniel
Wright, Ezekiel

ABSENT.

Abbott, Josiah G.
Adams, Shubael P.
Aldrich, P. Emory
Allen, James B.
Allen, Joel C.
Alley, John B.
Andrews, Robert
Appleton, William
Aspinwall, William
Austin, George
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Bancroft, Alpheus
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bishop, Henry W.
Bliss, Gad O.
Bliss, Willam C.
Bradbury, Ebenezer
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Bryant, Patrick
Bullen, Amos H.
Bumpus, Cephas C.
Caruthers, William
Case, Isaac
Chapin, Chester W.
Chapin, Henry
Childs, Josiah
Choate, Rufus
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Cook, Charles E.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fitch, Ezekiel W.
Foster, Aaron
French, Charles H.
French, Samuel
Gale, Luther
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Gould, Robert
Graves John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Josiah W.
Griswold, Whiting
Hale, Artemas
Hale, Nathan
Hall, Charles B.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Haskell, George
Haskins, William
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Heath, Ezra 2d,
Henry, Samuel
Hewes, James
Heywood, Levi
Hobart, Aaron
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Howland, Abraham H.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlburt, Samuel A.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Langdon, Wilber C.
Lincoln, Frederic W., Jr.
Little, Otis
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meader, Reuben
Mixter, Samuel
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Norton, Alfred
Noyes, Daniel
Orcutt, Nathan
Orne, Benjamin S.
Osgood, Charles
Paige, James W.
Paine, Benjamin
Paine, Henry
Parker, Adolphus G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Phinney, Silvanus B.
Plunkett, William C.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rawson, Silas
Reed, Sampson
Read, James
Rice, David
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Rockwood, Joseph M.
Royce, James C.
Sampson, George R.
Sanderson, Amasa
Sanderson, Chester
Sargent, John
Sherman, Charles
Sherril, John
Sikes, Chester
Simmons, Perez

| | |
|---|---|
| Simonds, John W. | Upham, Charles W. |
| Sleeper, John S. | Upton, George B. |
| Smith, Matthew | Viles, Joel |
| Souther, John | Vinton, George A. |
| Sprague, Melzar | Walcott, Samuel B. |
| Spooner, Samuel W. | Walker, Amasa |
| Stetson, Caleb | Warner, Marshal |
| Stevens, Charles G. | Warner, Samuel, Jr. |
| Stevens, Granville | Waters, Asa H. |
| Stevens, William | Weeks, Cyrus |
| Stevenson, J. Thomas | Weston, Gershom B. |
| Storrow, Charles S. | Wetmore, Thomas |
| Stutson, William | Whitney, Daniel S. |
| Swain, Alanson | Wilbur, Joseph |
| Talbot, Thomas | Wilder, Joel |
| Taylor, Ralph | Wilkins, John H. |
| Thayer, Joseph | Wilkinson, Ezra |
| Thompson, Charles | Williams, Henry |
| Tileston, Edmund P. | Williams, J. B. |
| Tower, Ephraim | Winn, Jonathan B. |
| Train, Charles R. | Wood, Charles C. |
| Turner, David P. | Wood, Otis |
| Tyler, John S. | Wood, William H. |
| Underwood, Orison | Woods, Josiah B. |

Absent and not voting, 254.

So the amendment was adopted.

The question then recurred upon ordering the resolves to a second reading.

Mr. WHEELER, of Lincoln, moved that the Convention adjourn.

Mr. MORTON, of Taunton, remarked that the Convention had this morning imposed upon the Committee on the Judiciary a very important duty, which it would be impossible for them to perform in time unless they were allowed to sit during the session of the Convention. He therefore asked that the motion to adjourn be withdrawn, until he could make a motion that the Committee on the Judiciary have leave to sit during the session of the Convention.

Mr. WHEELER withdrew the motion. The Orders of the Day were, on motion, laid upon the table.

On motion of Mr. MORTON, of Taunton, it was then

*Ordered*, That the Committee on the Judiciary have leave to sit during the session of the Convention.

On motion of Mr. BUTLER, of Lowell, the Orders of the Day were again taken up, the question being upon ordering to a second reading the resolves in relation to the Bill of Rights.

Mr. SCHOULER, of Boston, gave notice that when the resolves come up again upon their final passage, he should move to amend them.

The resolves were then ordered to a second reading, when

On motion of Mr. WHEELER, of Lincoln, the Convention adjourned until this afternoon at three o'clock.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

On motion of Mr. MORTON, of Andover, the Convention resolved itself into

COMMITTEE OF THE WHOLE,

Mr. Schouler, of Boston, in the chair, and resumed the consideration of the resolutions reported by the Committee on the

*Bill of Rights.*

The Committee first proceeded to consider the following Minority Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a Minority of the Committee on so much of the Constitution as is contained in the Preamble and Bill of Rights, report that the second Article of the Bill of Rights ought to be so altered as to change the words—"for his religious profession or sentiments" to the words "for his profession or sentiments concerning religion."

So that it will read, if so amended—"And no subject shall be hurt, molested or restrained, in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his profession or sentiments concerning religion."

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
HENRY WILLIAMS.
GEO. S. HILLARD.

Mr. CHANDLER, of Greenfield. I move to amend by striking out the word "subject" in the first line of the article, and inserting the word "person," so that it would read, "and no person shall be hurt," &c.

I also move to add at the end of the article the following proviso:—

Provided he does not interfere with the rights or privileges of other worshippers.

I fully approve of the alterations proposed in the Report, but it seems to me that proviso is necessary, because we know that there have been, and are, fanatics who will interfere with the privileges of other worshippers.

Mr. ALLEN, of Worcester. I should like to have some gentleman who is in favor of the alterations proposed in this Report, state to the Convention what evils we labor under at the present

time, and what occasion there is for making any change? If it is true that there is entire religious freedom in the Commonwealth at this time, then I think no better language can be employed than is contained in the Constitution as it now stands. But perhaps reasons can be given why this change should be made. At any rate, before adopting this amendment, I should be glad to hear the reasons given for proposing it.

Mr. LORD, of Salem. I desire to know of some member of the minority of the Committee which reported this amendment, whether, in changing the language of the present Constitution, which is, that no person shall be hurt, molested, &c., for "his religious profession and sentiments," to the words "for his profession or sentiments concerning religion," they mean to say that men may avow in just such terms as they choose, as blasphemously as they please, sentiments in relation to religion, by this provision which they recommend, or whether it is to give farther security to persons in their religious professions?

Mr. SUMNER, for Marshfield. Does the gentleman appeal to me?

Mr. LORD. I do.

Mr. SUMNER. I regret that the member for Wilbraham, (Mr. Hallett,) is not in his seat, for this Report, though signed by others, was brought in by him. Still, I am very willing to respond to the gentleman, so far as I comprehend the import of his inquiry.

The existing Bill of Rights declares that no subject shall be molested "for his religious profession or sentiments." It is now proposed to say "for his profession or sentiments concerning religion." Now, it seems to me, that these two propositions, literally and properly interpreted, are substantially alike. I do not think that under the original words any person can be justly molested for any profession or sentiments concerning religion; always provided that he keeps himself within the accompanying limitation of the Constitution, that is: "*provided*, he doth not disturb the public peace or obstruct others in their religious worship."

Mr. CHANDLER, of Greenfield. I desire to ask the gentleman for Marshfield if the proviso he has just read is in the Constitution?

Mr. SUMNER. Certainly it is.

Mr. CHANDLER. Then I will withdraw the proviso I offered.

Mr. SUMNER. But the gentleman from Salem asks, why introduce the proposed amendment? For this simple reason. A question has arisen as to the meaning of the language now employed, and it well becomes the Convention, in revising its Bill of Rights, to place a right of such importance beyound doubt. Surely, while the religious worship of others is unobstructed, and the public peace is undisturbed, every man should be at liberty to speak his mind freely on matters of religion, as on all other matters; nor can I accept any restraint of this liberty, beyond the requirements of the public peace and the religious worship of others. Religious toleration is one of the boasts of our country, as it is one of the aspirations of all generous lovers of liberty everywhere; but if any person may be molested for his profession or sentiments concerning religion, expressed within the existing limitations of the Constitution, permit me to say, Sir, that religious toleration does not prevail in reality; it is a name, and nothing more. Let us now help to make it a reality.

Mr. LORD, of Salem. I understand that what has merely a tendency to disturb the public peace, will not make a man liable to be punished for a disturbance of the public peace. Now what I ask the gentleman for Marshfield, (Mr. Sumner,) is this: whether an infidel has not the right, under this provision, to introduce into every shop window in Washington Street, and into every public place in the Commonwealth, the grossest caricatures, burlesques, and denunciations of the Christian religion? I ask whether he may not, in this way, promulgate his sentiments concerning religion? I ask the gentleman to tell me if every caricature, and every burlesque of every person professing the Christian religion, and of every principle of the Christian religion, hung up upon every sign-board and in every shop-window in the Commonwealth, may not, under this provision, be a legitimate means for persons to promulgate their sentiments concerning religion?

Mr. CHAPIN, of Webster, moved to strike out the word "restrained," so that instead of "and no subject shall be hurt, molested or restrained," it would read "and no subject shall be hurt or molested."

Mr. SUMNER, for Marshfield. I venture to suggest to the gentleman from Greenfield, who proposes to strike out the word "subject," that the word "man" would be more appropriate in that particular place than "person." The latter word occurs in the next line of the same clause, and in a sense different from that it would have in the first line. I presume the gentleman would not desire to see such a repetition in the text of the Constitution, even if it were not slightly incongruous also.

Mr. CHANDLER. I accept the suggestion, and will move that the word "man" be inserted in the place of the word "subject."

Mr. SUMNER. I am glad the gentleman has called attention to this point, though its discussion at this moment seems to interfere with the main question. Unquestionably there are differences of opinion as to the expediency of change in the existing language of the Bill of Rights. All will agree that such a document, from such a pen, drawn from such sources, with such an origin in all respects, and which for more than three-score years and ten has been a household word to the people of Massachusetts, should be touched by the Convention only with extreme care. Its principles are justly dear; and its very words, vigorous and expressive, though not always those we should select, have become associated in our thoughts with the liberties which they guard. Still, had my desires prevailed in the Committee, there are expressions which I would have removed or changed, in order to bring the text into better harmony with our times; but I was overruled by the Committee, who preferred to leave the words as they came from the first Convention, and as they are now stamped upon the minds and hearts of the people of the Commonwealth. Some additional provisions I would have incorporated, also; and here again I was overruled, except so far as appears in the Report of the Committee; but I say nothing of these now. I am speaking simply of the language.

I am not strenuous in condemnation of the word "subject." It does not hurt me to be called a subject of the Constitution and laws. But I am bound to confess that there are other equivalent expressions which would do full as well, and would be more in accordance with the language of our day. It will be observed that this word occurs in several different clauses of the Bill of Rights. In the second clause I would supply its place by "man," according to the motion of the gentleman from Greenfield. In the eleventh clause, where it occurs once; and in the twelfth clause, where it occurs three times, I would supply its place by "person;" but in the fourteenth and twenty-fifth clauses, in each of which it occurs once, I would substitute "man." In making this change in the last two clauses, we should get back to the original draft of John Adams, which was altered in the Convention from "man" to "subject."

Mr. DANA, for Manchester. I would suggest the word "citizen."

Mr. SUMNER. This is a word of art, and is not so comprehensive and universally applicable as the word "man." It may be restricted to persons who enjoy the rights of citizens in Massachusetts.

Mr. BRIGGS, of Pittsfield. I came in when the gentleman for Marshfield was speaking, and I would be glad to understand more fully the object of the amendment. If there is any good reason for our interfering to change the form of a sentence in this part of the Bill of Rights, I have no disposition to oppose it. But what reason there is, any farther, when the gentleman says, as I understand him, that a liberal construction gives precisely the same import to both expressions, but there is some danger of a misconstruction of the language of the Bill of Rights as it is now, I do not perceive. Now, what that misconstruction is, or may be, I am not informed. I wish for some light on this subject. If there is any import to this new phrase different from that which strikes the ear or the mind, I should like to know what it is. If there is any meaning in the present term which is liable to misconstruction, and in any way to interfere with the unrestrained freedom of religious opinion, I should like to know what it is. I would like to know what that danger of misconstruction is, or how it may happen that any man in Massachusetts may be restrained, or curtailed, or deprived of any freedom of religious opinion and action consistent with the rights and interests of others, under the present Bill of Rights. When I know what it is, I will go as quick, and as far as any one, to redress it, and to provide against the evil. Therefore, I wish to have my friend say what this danger of misconstruction is, that will give a different interpretation to the old form of expression, which, he says, by a liberal construction, means the same as the other. If, by this alteration any such liberty is intended to be given as the gentleman from Salem (Mr. Lord) argues may be given; if by the language of the present Bill of Rights, which gives to every man freedom of religious opinion, he would not be permitted in language, in words, in actions, or by pictures, to ridicule and bring into disrespect, and treat with ignominy, the Christian religion, and this new mode of expression gives that right, or gives that liberty, I will not go for the change. If there is anything which will give a man who has no religion, who mocks at religion and its Author, who scoffs at the Creator, and tramples under foot all forms of Christianity,—if this amendment will give any man that privilege unrestrained, then I cannot vote for it. But, I say sincerely, I am in doubt. I do not know what different idea is intended to be introduced, and therefore I ask my friend to say what danger there is under the present Bill of Rights, of doing violence to any man's religious opinions, and what new security is given by the new form of expression? I ask with a sincere desire to be informed. If necessary, I go

for it freely; but if not necessary, I should not think it wise to change the present form.

Mr. KEYES, for Abington. The gentleman for Marshfield having once answered that question, and that not being the first question before us, I wish to make a remark on the amendment offered by the gentleman from Greenfield, which is to substitute the word "man" for the word "subject." I suppose that the word "man," is intended to be used in its most comprehensive sense, and to include the whole race. But, it is not always held to mean so much, and the fact that it has been used with other meanings than that, has led the world into some difficulty heretofore. If it is necessary for the harmony of the sentence, I would prefer that the word "individual" should be introduced instead of the word "man," although it does not sound quite as well. I think the Convention ought to decide to change the word "subject," for one or the other of the words named. We have no subjects of government here, we are all partners. We have subjects of other things, of parties and powers, but not of the government. I had the impression that the word subject was stricken out, in most cases, by the Convention of 1820, but it seems it was not. I trust that we live at a period when we shall use no such unmeaning term as the word "subject." I would prefer the word "individual," rather than the word "man," which properly construed, I suppose would mean all mankind. But that word has been so construed heretofore as to deprive a portion of the people of a portion of their just rights.

Mr. DANA. I was not in when the question was propounded; but, if I understand it, it is on striking out the word "subject," and inserting the word "man." The gentleman for Abington proposes to insert the word "individual." I do beg that we shall not call it "individual." Every scholar has an aversion to that word, where it can be avoided. I would rather see all the rust remain, than put the word "individual" into our organic law.

Mr. KEYES. I do not object to the word "person."

Mr. DANA. There is a difficulty about that, because it will occur twice in the same sentence. I am decidedly in favor of the word "subject." We discussed the matter in Committee, and there was, at first, a little natural pride exhibited, like that which the gentleman for Abington has manifested with regard to using the word "subject." We came to the conclusion, finally, that our ancestors—who had as much pride as we—understood the matter perfectly well when they called themselves subjects. I do not believe that John Adams, or Samuel Adams, or James Bowdoin, made any mistake when they called themselves subjects. They understood perfectly, quite as well as we do, that they were not subjects of any king; but they took a proper pride in acknowledging that that they were subject to the law. They took a proper pride in saying that every Massachusetts man, while he was a sovereign as a law-maker, was —the proudest of us—a subject to the laws when made.

Now, I am happy to be able to say, that whenever the people of Massachusetts pass a law, I am subject to that law. I take pride in saying that, while I am one of the sovereigns, as a law-maker, yet, as a law-obeyer, I am one of the subjects. For one, I desire to have this term remain, that the idea of duty may remain somewhere in our laws and Constitution. We are too much in a state of feeling which can recognize nothing but power in ourselves. The duty of obedience seems to be almost lost sight of. Now, my pride is not at all affected or hurt by calling myself a subject of the laws, or of the State. I should not wish to be the subject of any one man; but I am quite willing to be the subject of the State, and to recognize the fact that in one aspect we are all kings, but in another aspect we are all subjects. I submit whether this is not running the matter a little too fine to refuse to acknowledge this relation. Our ancestors acknowledged it in 1780, John Adams, and all the rest; and, in 1820, there was a discussion on striking out the word "subject," and inserting the word "citizen," or "person." It was opposed, and was rejected by a vote of two hundred and eight to two hundred and twenty-seven in committee; and afterwards, when it came up in Convention, it was rejected without a count, and the term "subject" remained. Let it be declared that every man—the proudest and wealthiest—is still a subject of the State. I hope, therefore, the word may still remain in the Constitution.

Mr. KEYES. I wish to say, that if we maintain these two characters of sovereign and subject, that perhaps we may as well introduce the word "sovereign" instead of the word "subject," because, according to the gentleman's own statement, we are just as much sovereign as subject. When that discussion, in 1820, took place, they were not so far advanced as we are by thirty-three years, and the men who then voted in favor of the change expressed the almost universal sentiment of this day, while the men who voted against it expressed sentiments that are outlawed.

Mr. WILSON, of Natick. I find the word "individual," the word "man," and the word "citizen," used in the Constitution in the same

sense in which this word "subject" is used. In most of the Constitutions of other States, I find the word "person" is generally used. In the new States, the word "person" is used instead of the word "subject." This is the only State that retains the word "subject," unless it be one or two of the older Southern States. I do not feel degraded by it; I agree with the gentleman for Manchester, that there is nothing derogatory in it. We are all sovereigns, and all subjects to our own government. But at the same time, I do not like the word very well, and I should prefer to see the word "person" used throughout, as it is used in the Constitutions of most of the new States of the Union.

Mr. CHAPIN, of Webster. I hope this whole resolution will be voted down; but, if it must pass, I prefer to have the amendment prevail. I think it is evident that this change which has been proposed, is not presented for the mere purpose of improving the phraseology of the Constitution. There is, evidently, a design behind that, and, for one, that design is very evident to my mind; and I hope that before the Convention vote upon this matter, gentlemen will study a little upon the phraseology of this resolution, and they must be able to see the real object of the change proposed. I wish the chairman of the Committee was present to make an explanation. I think we are not sufficiently acquainted with the matter. I hope we shall not impose upon courts of justice the necessity of receiving evidence of persons who disbelieve in a Divine Being. I think this amendment paves the way for such a result. I hope the Convention will be prepared to vote upon the subject understandingly.

Mr. BIRD, of Walpole. This amendment, which is proposed by the gentleman from Greenfield, (Mr. Chandler,) is a very grave matter, and I think there is reason for regret that it should have been introduced at this late stage of the session, when the fifteen minute's rule is in operation. It should have been brought in when the hour rule was in force, so that we could have had some speeches that would have opened up the whole question. I only want to say, that if gentlemen are disposed to make any more speeches upon the matter, as to whether we shall use the word "man," "person," or "individual," I shall feel constrained to move that the whole matter be referred to a Special Committee.

Mr. HILLARD. I am sorry, Sir, that the gentleman who represents Wilbraham, (Mr. Hallett,) is not here; this whole matter is a child of his begetting, and I regret that he is not here to look after it. It will be observed that my name is at the bottom of those who propose it; and I will tell the Committee how that happened to be so. The gentleman for Wilbraham introduced a large number of propositions for the consideration of the Committee. We had a great many meetings and a great many discussions, and I was obliged to oppose almost all of these propositions. Upon one occasion, when the matter before us was under discussion, it so happened that the fact whether it should be rejected or adopted, would depend upon my vote. I had very little choice about the matter, one way or the other; and so I said to my friend who represents Wilbraham, that, having been so often obliged to go against him from conscientious motives, now, when I could, with a little straining, go for him, I would willingly do so, and I did so; and, accordingly, the proposition was adopted. My hand being there to it, I am bound to stand up and explain what I suppose was the real motive that induced the minority of the Committee to submit the proposition. This whole matter grew out of a single memorable trial in this Commonwealth—the trial of the Commonwealth against Kneeland—and, were I addressing my friend from Taunton, (Mr. Morton,) I should say

"Quorum pars magna fuisti."

My friend who represents Wilbraham, was much exercised in his mind with regard to that trial, and I must say that, to some extent, I went along with him. I was one of a certain number of persons, who, under the lead of my revered and beloved friend, the late Dr. Channing, petitioned the executive to pardon that unhappy man. I understand that the doctrine upon which that conviction was obtained, was this: that although the Constitution said—[Mr. Hallett at this moment entered the hall]—I can now say, as Othello said, "Here comes the lady; let her witness it!" [Laughter.] I understand that the conviction was obtained upon the ground that, although a person could not be called in question for his religious sentiments—he might utter any sentiments whatever respecting religion, or respecting Christianity, so long as they were religious sentiments, but the moment he uttered irreligious sentiments he made himself amenable to punishment. From the principle involved in this construction, I must respectfully dissent. It seems to me, that upon this whole subject of religion, or more properly, of Christianity, for that is what is meant here, there are two rules. One of these is the rule of the Romish Church, which denies entirely the right of private judgment. They say that the Church, being a body of wise and learned men, running through all periods of

time, have construed the Bible, and have agreed upon certain doctrines and tenets which are not only to be received as true, but all others are false. No person shall preach or maintain any doctrine opposed to them; and, not only that, but no person shall think or hold, within the sanctuary of his own conscience, except on sufferance, any other doctrines than those which the Church approves and teaches. That is the Romish rule or principle, and is consistent and intelligible; the Protestant doctrine, on the other hand, gives the right of private judgment, without limitation, and without restriction. Between these two, I cannot see any principle on middle ground; and I do not think it is ever wise to punish a man for his sentiments or opinions concerning religion. I humbly think that the trial of Kneeland was unwise as a matter of policy, and that the friends of Christianity can never wisely and judiciously ask that the arm of law shall be stretched forth to silence discussion. So long as a person utters his sentiments, supposing them to be irreligious and opposed to Christianity, so long as he utters them with decency and decorum, I would not have him punished. Among the petitions presented to the Committee, was one from an individual bearing the name of Le Barnes; I do not know who he is, but his argument was, indirectly and by inference, rather against Christianity; and, so far as it went, the language was perfectly decorous. His arguments were addressed to the reason; but the difficulty is, that in almost all cases, those who oppose Christianity are left, by the very infirmity of mind and heart which leads them to do so, to use language which is indecorous, and which should not be tolerated. The difficulty in Kneeland's case was, that there were some expressions which he used, that were outrageous and indecent; and it was for that reason that the sympathies of the community were not excited in his behalf. Here is the difficulty about this subject. While I would not, on the one hand, restrain or punish any person who should utter irreligious or un-Christian sentiments in decent language, which did not lead to a breach of the peace, I do think that society has a right to punish the man who assails our religious convictions, and wounds our religious sensibilities by indecent, contemptuous, and sarcastic language, such as, from the infirmities of humanity, leads inevitably to a breach of the peace. Here is a practical difficulty in legislation which I hardly know how to meet. On that account, for one, I never would have stirred in this matter; I never would have presented it to the Convention; and, frankly, I must confess that I have very great doubts about the wisdom or propriety of submitting it to the action of the people.

Mr. CHANDLER, of Greenfield, When I first read this resolution, I supposed that it was intended to throw open the whole area to free and perfect competition, and not that any consequences would be likely to follow, such as have been suggested by the gentleman from Salem, and by the gentleman from Pittsfield—gentlemen who are versed in the law, and who are more capable of judging than I am. I suppose it was not designed to give countenance to any such thing; and if such an abuse was to be made of it, I presume it would be actionable at law. It would come under the proviso that the legislature have a right to pass all wholesome and reasonable laws; but I trust that no man, for undertaking to propagate his sentiments concerning religion, will be subjected to any pains or penalties whatever. I do not know but that my friends will think that I am taking a very strange course for a man in my position; but what I am about to state I have held for years—I have declared my views in the private circle, I have declared them publicly in my own pulpit, and I am ready to declare them in this assembly. I have no sympathy with the Atheist, who denies the God who made him; I have no sympathy with the Deist, who denies the Savior who bought him with his blood; and least of all have I any sympathy with the professed Christian minister, who acknowledges Jesus as his highest ideal of human greatness and virtue, and in the same connection proves him guilty of falsehood. No, Sir! but I hold to free competition. I never feel that the citadel of truth is safe, while it is surrounded by bulwarks of human erection; but, in maintaining the cause of the Bible, I will retreat into the citadel, and open every door, and there I defy the world. It appears strange to me that men should often seem to be so afraid of the consequences of certain things. It was but a year or two since, that I was conversing with a gentleman high in civil society, of education, and in an honorable profession, who expressed great fears that geology was going to disprove the Bible; and with another one who was mightily afraid that the science of phrenology would overthrow the Bible. It appears to me that they really did not believe the Bible. I have such a conviction in the truth of the Holy Scriptures, that I say, only leave the Bible free, and leave its friends free to defend and advocate its truth, and you may leave all the opposition in the world free to attack it; I have no fears as to the result. Let them come into free competition; let every kind of error and delusion speak, only let truth be free to speak in turn, and

I fear not. For this reason I approve of this resolution, and hope that it will pass.

Mr. FRENCH, of New Bedford. I will merely say, Mr. President, that my mind preponderates in favor of the word "person," and I should like to have that word inserted in preference to any other word that I have heard mentioned. There is a national odor about it which I like.

Mr. SUMNER, for Marshfield. I should like to ask the gentleman if he observed that the word "person" occurs in the second line. I presume he would not desire to have the word occur twice in the same sentence, used in different senses.

Mr. FRENCH. There might be some difference of opinion with regard to that; it would not be a very strong objection to my mind. As I was saying, there is a kind of national odor about this word "person"; I find that it is frequently used in the Constitution of the United States. I am in favor of that instrument, let me here remark, although so many persons suppose that I am opposed to it. I find, on a single page of the book before me, that the word "person" occurs three times: "No person shall be convicted of treason," &c. Then again: "A person charged in any State with treason, felony, or other crime," &c.; and again: "No person held to service or labor," &c. It is a term that is plain and simple, and at the same time most comprehensive. If we turn over, we find in the United States Constitution, in another place, the following: "No person shall be held to answer for a capital or otherwise infamous crime," &c. As the word "person" covers the whole ground, I am decidedly in favor of it.

Mr. HALLETT. I was unavoidably detained from the Convention until after the hour of meeting, and am indebted to my colleague on the Committee, the gentleman from Boston, for giving an explanation of this proposition; nevertheless, I desire to offer a word or two in order that the Convention may fully understand the views with which this amendment was suggested. I understand that the proposition is now to amend by substituting the word "person" instead of "subject." I will only say in regard to that, that the Convention of 1820, containing men of all sorts of views and feelings, applied their criticisms to it, and after all, concluded to let it stand. The truth is, there is no word in the English language, applicable to a proposition of this kind, which you can substitute for it. It embraces every human being, who can by any possibility be within the Commonwealth; and whoever is within the Commonwealth must be subject to general laws of some kind or other. As that is the original word, I propose to leave it as it stands; if the Convention think proper to change it, they can do so, but I will remark that this change will render it necessary to make a great many alterations throughout the Constitution.

The gentleman says he regards the words proposed to be changed as comparatively slight and unimportant; because no man shall be called in question for his religious sentiments or opinions. It is in vain to deny that the practical construction of that is, that a man must have some religious sentiments or other. He shall not be called in question for his religious opinions or sentiments, but he may be for his irreligious opinions. Who is to determine whether his opinions are religious or irreligious? Your court, and therefore it is an ecclesiastical tribunal. That is the rule of law as it now stands. Let me refer, simply to show the operation of your Bill of Rights in this respect, to the case of the Commonwealth *vs.* Kneeland, as laid down in 20 Pickering's Reports, 206: "The Universalists believe in a God which I do not, but believe that their God, with all his moral attributes (aside from nature itself) is nothing more than a chimera of their own imagination." This language, which Mr. Kneeland published, was blasphemy, as the judges said, because he did not put a comma after God, although the author of it declared that he intended to have put a comma there. If we put in a comma it will read: "The Universalists believe in a God, which I do not"—that is, they believe in a kind of God which I do not, and it is no blasphemy at all. But the judges read it right on, "The Universalists believe in a God which I do not"—that is, I do not believe in any God at all—"but believe that their God, with all his moral attributes (aside from nature itself) is nothing more than a chimera of their own imagination;" and then it was blasphemy. The court also held that the law was not designed to prevent the simple and sincere disavowal of belief in the existence or attributes of a Supreme Being, upon suitable and proper occasions, but to punish a denial of God, made wilfully, and with a bad intent; and the question was very well put, how on earth is a man to deny God at all unless he does it wilfully? If he does not believe in a God, he must do it wilfully; and yet the judges say that he may deny God, provided he does not do it wilfully; and they did not punish him for denying God, but merely because he denied him wilfully! This brings us back to the question, have we arrived at this point in the Commonwealth of Massachusetts,—I arrived at it a good many years ago, but perhaps I am as much in advance on this point as I am in some others; I do not know how that may be,—have we arrived at this point in religious

freedom, to say in our Constitution that no man shall be molested or called in question for his opinions or sentiments concerning religion? As to the manner in which a man shall conduct, that is a very different question. I do not say that he should be allowed to go about the streets and proclaim his doctrines, for you do not allow Father Lamson to go into the streets and proclaim orthodox doctrines, or Mrs. Folsom to go about proclaiming abolition doctrines. Whatever doctrines are proclaimed in the street, if they are likely to create a mob or a riot, so as to disturb the public peace, that is quite another matter; it makes no difference what doctrines they are. The question for us to decide is, shall we go forward, or shall we go back to the old times in 1637, when Governor Winthrop with his Council—that very Council that sits in that secret room—called up that poor woman, Ann Hutchinson, for blasphemy, because she said that the ministers of Boston preached the doctrine of works, and not the doctrine of grace? When she said it was matter of conscience, the reply of the inquisitor, Governor Winthrop, was, you must keep your conscience right, or we shall keep it for you. And, accordingly, they did undertake to keep her conscience. They banished her; and, as history tells us, she went from here into the wilds of Connecticut; and the court of Massachusetts pursued her even there, and demanded that Connecticut should drive her out from their borders; and she was driven out and went into Rhode Island among the Indians, and herself and whole family were afterwards massacred. Now, Sir, that is a black stain upon the history of the Commonwealth of Massachusetts—a stain which has remained upon it to this day—and I hope that by our action upon this amendment, we will to-day wipe out that stain.

Why, Sir, even as late as 1811, a man could not worship God according to the dictates of his own conscience. He was obliged to contribute to the support of the parish minister. Among the earliest things that I can remember was the tythe man coming to the house of my father, who then contributed some $200 a year for the support of a Baptist minister. The tythe man came and seized his cow, and sold it for the payment of his parish taxes, because his conscience would not let him pay them. That circumstance made an impression upon my mind which I have felt ever since; and from that hour to this, I have thought it wrong to put any restraint upon any man's religious sentiments. With the belief, therefore, that God himself will take care of his own religion, which is worth preserving and sustaining, I think we should leave all men to the free exercise of their opinions on matters of religion, with the full liberty to worship God or not to worship him, as they may see fit.

Mr. WHITNEY, of Boylston. I should like to say one word upon this subject, and also to offer an amendment. I want to give my adhesion to the remarks of the gentleman on the left of the Chair, (Mr. Chandler,) and simply to say that I hold to that Protestantism which says that every man has a right to read and judge, and decide for himself, in all matters of religion; for, if we have not this right, then we might as well go back to Catholicism at once. Sir, if I were asked to give a reason to-day why it is that Catholicism, in this and other countries, is gaining ground, I should say that it was because Protestants had departed from their own Protestantism, and that we need another revolution in this matter; that every man has become, himself, a sort of pope, on a small scale, and actually verifies what one of the popes once said—that the Protestants denied the divine authority of the pope, in order that they might set up themselves as popes.

It seems to me, Sir, to be the worst of infidelity to bring the Word of God to sanction crime. He who brings forward the Bible to sustain the fugitive slave law, is, in my opinion, among the greatest blasphemers in the world; yet some of the clergy seem to think that they have a right to blaspheme in this way. Sir, I repeat it, that if they do so, they are among the greatest blasphemers that have ever been seen on the face of the earth. I am, therefore, in favor of this amendment; but I want to offer an amendment to it, because there is an exception that I want to show. I want to say that no man shall be molested for his religious opinions, except those whose opinions forbid the taking of human life. That exception is already made, in fact, and I want to have it acknowledged. The first best thing that a man can have is his rights, and the next best thing to that is to have his wrongs acknowledged. I do not mean to complain here or anywhere else of the action of the Convention. Why should you require that an oath or affirmation should be taken, by which every person by himself or his agent shall accede to the principle of taking away human life? Myself and five or six hundred others cannot take that oath. We have remained outside of the government for more than fifteen years, and men in all ages of the world have stood upon this objection, and I think our sentiments will not die out for some generations to come. We have had an existence since the days of Jesus Christ, and even before his days; and all we have asked for is a peaceable acknowledg-

ment that our religious opinions in this respect shall not deprive us of our civil rights.

Gentlemen may say, with flippancy, "All you have to do is to take the oath," that "it does not mean anything." But, Sir, to us it does mean something; it means as much to us as did that oath which was required of Daniel O'Connell, that he would support the Protestant succession, which oath he, as a Catholic, could not take; and he was refused a seat in parliament in consequence, until the people of Ireland and the Catholics of England knocked so loudly at the door of that house, that they were obliged to repeal the law, and pass the Catholic Emancipation Act. We stand out upon precisely the same principle.

Mr. President: I have an amendment to offer, and I will give you the reason why I offer it.

The PRESIDENT. An amendment is not in order at this time. There are already two amendments pending.

Mr. HILLARD. I wish to state, in reply to one or two questions that have been asked here, that I do not understand, nor was it the understanding of the minority of the Committee, that this proposed amendment had anything to do with the exclusion of witnesses on account of their religious belief. That issue was not before us. I do not understand how giving testimony in a court of justice can be said to be a privilege, or how any person can be said to be restrained in the exercise of his religious freedom, in consequence of being debarred from giving testimony. If there be anybody who is deprived of a privilege, it is the party who calls the excluded witness; not the witness himself. The former loses a privilege; not the latter.

Mr. HALLETT. This is a question of the most important character; and I should hardly conceive that, in this enlightened age, any court would so construe that provision as to impose any restriction in this respect at all.

Mr. HILLARD. It is no "molestation" to deny to a man the right to testify. We do not allow parties to testify for themselves. We seal their lips, though they know more about the matter than anybody else. If we exclude them, we may exclude any one else.

The question was then taken on the amendment to the amendment, which was to strike out the word "subject" and insert in place of it the word "man."

The amendment to the amendment was rejected.

Mr. BUTLER. In order that there may be perfect unanimity in regard to this matter, I now move that the word "subject" be stricken out, and the word "one" substituted in its place. It will be better English, and will cover the whole ground. It will then read:—"It is the right of all men to worship the Supreme Being," &c., and "no one shall be molested," &c.

Mr. DANA. I move to amend the amendment of the gentleman from Lowell, by substituting "two" for the word "one" [laughter]; and the question will, of course, be taken on the highest number first. [Laughter.]

Mr. BUTLER. The gentleman for Manchester is wrong on two grounds: first, in interrupting a gentleman who has the floor, [a laugh]; and secondly, that it is hardly worth while to attempt to meet argument by ridicule. I think, that on examining the matter, the gentleman for Manchester will see, that my proposition makes better English.

Mr. DANA. What! "one" better than "subject."

Mr. BUTLER. Yes, "one" better than "subject."

Mr. DANA. I do not agree to that.

Mr. BUTLER. Well, let us see how it is. You first say, that all men shall worship God, as they please, and then you say, that no "subject" shall be "molested or restrained," &c. You thus make a distinction between men and subject. Now, it seems to me, that it is better to say, that all "men" shall worship God as they please, and that no "one" shall be molested or restrained in the exercise of that right. I understand it to be better English, and I think it will meet the wishes of every-body, besides. It suits the feelings of my friend for Abington, and also of my friend for Manchester, who wants to be understood as being in favor of this law, although he wants to ridicule my proposition by substituting "two." [A laugh.]

Mr. CHAPIN, of Webster. I am gratified that the gentleman for Wilbraham, has conceded the points which I made, and I think the Convention now fully understand the state of the case. I am glad that the attention of the Convention has been called to that particular concession.

Mr. BRIGGS, of Pittsfield. I am gratified, that my friend for Wilbraham has thrown some light upon the subject——

Mr. SUMNER, for Marshfield. Will the gentleman from Pittsfield allow me to say, that I would like to answer the question of the gentleman for Wilbraham, by stating, that I thought I had properly answered his question, before he took the floor. That suggestion was not made in Committee, nor did I hear it made by any gentleman before.

Mr. BRIGGS. One thing is true. The gentleman for Wilbraham avows his opinion manfully and nobly; and now, it appears, that

though the other gentlemen of the Committee did not apprehend anything of this kind, his opinion is, that the law should be changed on the subject of the admission of witnesses to testify. By the present law, as I understand it, no man who denies the existence of God, is permitted to take an oath in the name of that God whose existence he denies. Now, my friend for Wilbraham understands the effect of this to be, that the courts would so construe this, as that when a man presents himself as a witness, even if he were an Atheist——

Mr. HALLETT. I did not say what the courts would do; but I spoke of the manner in which they ought to construe this provision.

Mr. BRIGGS. The gentleman avows plainly what he means, and what he thinks ought to be done. Now, if the Convention is prepared to say that there shall be no limitation in regard to the admission of witnesses, then we vote understandingly. I wanted to know more explicitly what are the evils complained of in the present Constitution, and what the remedy is to be. We now have something tangible. It is expected, that if this amendment is adopted, it will do away with all restraints upon witnesses produced in court, and that an Atheist is to be sworn in the same manner as the man who believes in the existence of that Supreme Being, upon whom he calls when he testifies.

Mr. HOLDER, of Lynn. Gentlemen are alarmed unnecessarily about this question. I cannot conceive a reason why a person who professes that he does not believe in the existence of a God, should, by that profession, be rendered unfit to give testimony in a court of justice. Suppose a man does believe in God; suppose that that man has no regard for humanity, no principle, perhaps, as good as we entertain; suppose he have a God in his imagination equal to Nero in cruelty, invested with everything odious to humanity, and nothing we could love, but everything to hate; I ask if that belief makes his testimony any better, whether it makes him more humane, more of a man that will tell the truth? Does not the very fact that a man, who disbelieves in the existence of a God, acknowledges that disbelief against the contrary prevailing sentiment, go to show that he is an honest and a truthful man? The idea which I hope we shall entertain of God, if we believe in one at all, is that of the being who has implanted himself in humanity at large.

When it was suggested to turn the word "subject" into the word "man," I thought that was the proper word. *Man*, understood in his rightful sense, gives power and efficiency to the word. I wish we all understood man as he was comprehended by that distinguished individual referred to by the gentleman from Boston, (Mr. Hillard). I would that we all understood him in the greatness and power which belongs to him.

I hope the amendment will be adopted; for I believe one of the greatest manifestations of true religion is that which gives man his freedom, in every sense of the word.

Mr. JENKS, of Boston. I should like to inquire of the Chair, what the question is before the Committee? Is it not the motion to substitute the word "one" for the word "subject?"

The CHAIRMAN. It is.

Mr. JENKS. The word "one," was proposed by the gentleman from Lowell, (Mr. Butler). Now, it seems to be very difficult, in this wise body, to find any sort of satisfactory synonyme for the word "subject." Some gentlemen suggest "individual," others "man," others "one," others the word "citizen," and so on with others. Now, Sir, if they want to define the thing more nicely, they might as well take a definition which I have seen somewhere in print, and adopt that part of it which defines "man" to be "any intelligent, two-legged, featherless animal." [Laughter.]

Mr. GARDNER, of Seekonk. It seems to me, after all, that the word "subject" is the correct word, and one which is the most explicit. I hope, Sir, we shall not continue to debate this subject any farther. I hope the question will be put now, and the sense of the Convention taken upon the amendment offered by the gentleman from Lowell.

Mr. PARKER, of Cambridge. The Committee on the Bill of Rights, after listening to a discussion among themselves very much like that to which the Convention have listened this afternoon, came to the conclusion that it was best to retain so much of the rust of the Bill of Rights as was embraced in the word "subject."

The question recurring first upon the amendment offered by the gentleman from Lowell, (Mr. Butler,) it was put, and decided in the affirmative, upon a division, there being—ayes, 150; noes, 107.

So the amendment was adopted.

The question next recurred upon the amendment proposed by the gentleman from Webster, (Mr. Chapin,) to strike out the words "or restrain," and insert the word "or," before the word "molested," and being put, it was decided in the negative.

So the amendment was rejected.

Mr. SPOONER, of Warwick. I propose an amendment at the end of the clause, by adding

the words "or any other subject," so as to provide that he shall not be molested for his sentiments, not only on the subject of religion, but on any other subject.

It may mean something, or it may not. I do not know whether it will. I think the gentleman for Wilbraham, (Mr. Hallett,) will recollect a subject to which it might have applied, some two or three years ago. If I recollect aright—for I was not deep in the subject of politics at that time—a governor of this Commonwealth—the governor who preceded the gentleman from Taunton, (Mr. Morton,)—proposed that a certain law be enacted, or rather that a certain law be applied to a certain class of persons who were very closely connected with a peculiar institution which exists in this country. On account of the sentiments of that governor upon that subject, the people of the Commonwealth restrained him from the exercise of his official duties; and I would restrain any governor from making any such proposition again.

The question was then taken upon the amendment offered by Mr. Spooner, and it was rejected.

The question then recurring upon the resolution, as amended,

Mr. LORD, of Salem, said: The gentleman who represents Wilbraham, (Mr. Hallett,) very frankly told us, in answer to an inquiry, or rather he volunteered to tell us, that this resolution was intended to take away all disqualification of witnesses, on account of their want of religious belief. It was calculated to do that. Now I desire to ask that gentleman if, in his judgment also, this resolution, or the principle of it, if incorporated into the Constitution, would prevent the punishment of any person for blasphemy?

Mr. HALLETT. If the gentleman will inform me what he means by the word "blasphemy," I will answer him.

Mr. LORD. Just what the law of the Commonwealth defines blasphemy to be, the contumeliously denying the existence of the Deity, or reproaching the Deity. Does he mean to say that a man, in the promulgation of his sentiments concerning religion, may contumeliously deny the existence of a God, or reproachfully deny it? I ask that because the gentleman knows that the language at the end of the sentence, which is "provided he doth not disturb the public peace," does not affect it, because it is a well settled principle of law, that no *words* disturb the public place.

Mr. HALLETT. I desire to ask the gentleman another question: what does he mean by contumeliously? What signification has it?

Mr. LORD. I will read the statute of the Commonwealth; and I ask the gentleman whether this resolve would abrogate that statute?

"If any person shall wilfully blaspheme the Holy name of God by denying, cursing, or contumeliously reproaching God, his creation, government, the final judging of the world, or by cursing or contumeliously reproaching Jesus Christ or the Holy Ghost, or by cursing, or contumeliously reproaching the holy word of God, contained in the Holy Scriptures, or exposing them to contempt and ridicule, he shall be punished by imprisonment in the State Prison not more than two years, or in the county jail not more than one year, or by fine not exceeding three hundred dollars, and may also be bound to good behavior."

Now I ask the gentleman, if in his judgment, this resolution is intended to abrogate that statute?

Mr. HALLETT. The gentleman is very much distinguished in law, and I presume he must be equally so in polemics, and if that be so, he can explain this matter. I cannot. I do not know what contumeliously means. It may be that it will be explained, as in this volume of Pickering's Reports, it is said "wilfully" means "intentionally."

Mr. LORD. I do not now ask what he understands to be the meaning of this, but does he intend to abrogate it?

Mr. HALLETT. I mean to abrogate every power of every tribunal, ecclesiastical, civil, religious, or irreligious, to call any man in question for the opinions which exist between him and his God. That is what I mean. And then outside of that, outside of religious opinion, there exist the duties which man owes to society. Neither a religious man, or an atheistical man can infringe the duties which he owes to society. This is one thing, and the duty he owes to God another. It is entirely immaterial, as far as we have any control over them, what opinions he holds as to his God; but his duties between himself and his fellow men, are imperative that he shall so use his own as not to injure the possessions of others. He shall, therefore, so hold his opinions, and exercise them, as not to injure and abuse the opinions of others. In short, in the language of this Constitution, he may do anything, "provided he doth not disturb the public peace, or obstruct others in their religious worship." A man, therefore, might contumeliously reproach God in his own closet, and injure nobody; but, if he goes into the streets and does it, it may be another thing.

Mr. LORD. Will the gentleman tell me whether he *means* to have this resolution abrogate that law? Does he mean that it shall be abrogated or not? That is the question.

Mr. HALLETT. I mean that the courts shall put their own construction upon it.

Mr. LORD. I do not want to know what the courts will do, but what the gentleman *means?*

He can certainly have no objection to telling us whether he means to abrogate the statute I have read. Of course the gentleman has no concealment.

Mr. HALLETT. The gentleman is very pertinacious upon this subject. I mean, if I can, to give such a direction to the public sentiment, bearing upon the highest judicial tribunal in this Commonwealth, that it shall never again have its courts dishonored by another such trial as has been heretofore alluded to.

Mr. LORD. That does not precisely answer the question. The Constitution is the supreme law, and this is subordinate. Now does he mean that that shall abrogate this? That is the question. He certainly can have no objection to tell us what he means. Does he mean that the supreme law shall be in conflict with this subordinate law?

Mr. KEYES. I might as well say a word, as to listen any longer to this debate, for it seems to amount to nothing. Now, Sir, so far as regards my own vote upon this subject, I had made up my mind to give it for this resolve. But, as I understand gentlemen, it has been said the probability is, that it may do away with the requirement of a belief in God to render a man competent to give his testimony in a court of justice. Now, in voting for this proposition, in that view, it might appear to some men in this Commonwealth that those so voting, are rather loose in their morals or religion. I shall vote for it, I trust, without being understood on that account, to entertain opinions inconsistent with Christianity. I recollect being myself upon a jury where I had the opportunity of getting the opinion of one of the supreme justices of this State on this subject. I recollect that when a witness was brought upon the stand, the counsel proposed to question him upon the subject of his belief in God. The judge who presided in that case, not only indicated, but said in so many words, "Do not do it," so that it was heard by the jury, and I do not know but it was heard by every person in the court-house. It gave me to understand it was his opinion, at least, that it was an improper act. Now, when it comes to this, I for one, should like to have something in the Constitution to prevent calling upon God to attest the numerous lies that are told upon the stand. I think if there is any blasphemy anywhere, and any temptation to it, it is that men are compelled to call upon God to witness the streams of falsehoods which are poured out upon the witnesses' stand. It is not necessary under our Constitution. Men are supposed to be able to tell the truth without this. One sect of Christians are not required to do it; and that is a sect which all will admit, tell the truth more uniformly and conscientiously, than any other portion of the community, on the stand, and everywhere else. They affirm under the pains and penalties of perjury alone, and it is those pains and penalties alone which produce any effect. At our custom-houses they have what they call a custom-house oath, which every-body knows, practically means nothing. Were it not for the pains and penalties of perjury, men would be just as well with the oath as without it. It is not so much from my own observations that I have come to this conclusion, as from the testimony of lawyers and others who are familiar with the proceedings in courts. Therefore, in voting for this, I do it because I believe it is useless to question a man as to his belief in God. Everybody believes in some sort of a superintending power, even if it be that of blind chance. Whatever belief he may have, he may swear if he pleases before the court that he believes in a God, although he may be what is called an infidel; and therefore in voting for this proposition, which may do away with the law forbidding infidels to testify, I trust none of us will be charged with any want of awe or reverence for the Supreme Being.

Mr. KINGMAN, of West Bridgewater. I shall vote for the amendment of the gentleman for Wilbraham, and I shall do so because I am in favor of the greatest liberty being allowed in this matter. Why, Sir, if the prediction of the distinguished member for Berlin is to be verified, we shall, in less than half a century, have half a million of Chinese in the State of Massachusetts, every one of whom is an idolater. And are these Chinamen to be deprived of the right of testifying in our courts of justice? It certainly appears to me to be a curious idea. I hope the amendment will be adopted, so that every man, be he Christian, Mahometan, or idolater, may have the privilege of testifying in our courts.

Mr. CHAPIN, of Webster. Mr. Chairman: I should like very much to know, what are the main objects which this Convention was called to consider. It has been said, that we have assem bled here for certain purposes, and we have considered and acted upon many important subjects but, Sir, I claim that we are not here to amend the Constitution in the manner now proposed. The people never contemplated any such amendment; they did not expect it; and are not prepared to vote upon it. I do not believe that the legal voters of our Commonwealth are ready to deny the existence of a Supreme Being in our courts of justice; but, on the contrary, they desire that every man connected with these proceedings, should feel and acknowledge His pres-

ence; that the judge upon the bench should feel it; that the juries in their boxes should feel it; and, above all, that the man upon whose testimony is depending the life and liberty of a fellow creature, should feel that the Great God is looking down upon him, and that the Recording Angel is writing every sentence he utters. And yet, from the remarks of the gentleman for Wilbraham, I am inclined to think that the design of this amendment is to effect that very object.

I wish to say, farther, that as a member of this Convention, and especially from the peculiar relations I sustain to the gentleman for Wilbraham, (Mr. Hallett,) I have the right to an answer from him, to the question proposed by the gentleman from Salem, (Mr. Lord). It so happens, that the town which he represents is my native place, and I am very happy it has been so ably and correctly represented in this Convention. I wish to say, for the encouragement of the gentleman for Wilbraham, that my eye has continually been upon him and his actions, during this session; and I have had occasion to feel proud that my native town has had so able, just, and learned a representative; but I do feel a mortification this afternoon, in seeing the town of my birth and education represented in this Minority Report of the Committee. I am sorry that that Report has come from the gentleman for Wilbraham; I should have much preferred that it had originated in some other quarter, and I trust that this Convention will not fix upon the town of Wilbraham the disgrace of having originated an amendment to the Constitution of this character, to be acted upon by the people of the Commonwealth.

Mr. HALLETT. The gentleman from Webster has done me great honor in his remarks, and I thank him for his compliments. I will show him, however, that I know his town as well or better than he does himself, and that it is, moreover, one of the most liberal towns in the Commonwealth. To convince him of this, I will call to his mind a single fact in its history.

In 1741, it was undertaken to form a church in Wilbraham, and the reverend ecclesiastics came from Springfield for the purpose of founding it according to the ecclesiastical rules of the Westminster platform, or whatever platform they had at that day, which required seven persons to make a church, and they had not but six on whom they could rely for this purpose. What to do they did not know, until at last the expedient was hit upon, to go out in the streets and seize the first man whom they met. They accordingly did so, and found one David Warner walking along, and, without stopping to inquire what was his creed or belief, or whether he had any at all, they carried him off and made him join the church, to make up the odd number which was required.

Now I propose to do the very same thing in regard to the people of this Commonwealth. I desire that they may go into our great State church, without being particularly questioned in reference to these nice points of faith. I would treat every man as David Warner was treated; and, if I stand well here in other respects, I am confident that that generous constituency who said, when they sent me here, in a letter which I hold in my possession, "that they gave me no other instructions, than to do that which my conscience directed me," will sustain me in whatever course I may pursue. At any rate, whether or not I stand well before my constituents, in advocating religious freedom, I know I stand well before my God.

Mr. PLUNKETT, of Adams. I am not going to detain the Convention by any lengthy remarks, but I merely rose to express my disagreement and opposition to this amendment. I feel that it will not be safe, and my impressions are strengthened by reading the words of one whom every-body revered—the words of George Washington. He says:—

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles."

Comment on this is unnecessary; it cannot fail to have its effect upon the minds of those who are in doubt upon the subject, and it may possibly lead those who have become fixed in their determination in favor of this amendment, to look at it in a different and more rational manner.

Mr. ABBOTT, of Lowell. Without intending to detain the Convention, I desire to say a single word upon the point raised, as to whether the adoption of this resolution would prevent the courts from deciding, or the legislature from enacting, a law that an Atheist might testify in courts of justice. I do not care what my friend

for Wilbraham may say upon the subject, but I do not believe for a moment that he will risk his legal reputation by saying that the adoption of such a provision will have the slightest effect upon that question. I think that the criticism of the gentleman from Boston, so far as this matter is concerned, is perfect. It is by no means a privilege, that men are allowed to testify. No man can go into court and say, "Here I am, gentlemen of the jury, I want to testify," but he is obliged to go there—it is his duty, and not a privilege.

In regard to the matter under consideration, I believe there is nothing which would, in the slightest degree, interfere with the passage of this provision which has been reported by the Committee. Nor do I believe that it would affect the question, whether a man should be permitted to testify who did not believe in a Supreme Being; for how can it be said that because you do not allow a man to testify on account of his disbelief in a Supreme Being, you restrain him in his person, his liberty, or estate? Besides, the matter has been already passed upon by the supreme court of this State.

I have made these remarks because I desire that no man may be prevented from voting for this resolution from any supposition that it will affect his religious belief. I am free to say, and will not attempt to disguise it, that if I believed for a moment that this would be the effect of it, whether it is progressive or not, whether it is a work of reform or not, I would cut my right hand off before I would vote for such a proposition.

The question was then taken upon the adoption of the Report of the minority of the Committee, and upon a division—ayes, 121; noes, 168—it was decided in the negative.

So the Report was rejected.

Mr. HALLETT moved a reconsideration of the vote which had just been taken.

Mr. LORD, of Salem. Before the question is taken on that motion, I wish that the gentleman for Wilbraham would answer my inquiry.

The question being taken on the motion to reconsider, it was decided in the negative.

The Committee of the Whole then proceeded to consider the Minority Report of the same Committee, on the subject of

*Law Martial.*

The report was read, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a minority of the same Committee, also report.

To strike out from the 28th article of the Bill of Rights the words "but by the authority of the legislature."

So it will read, if amended,

No person can in any case be subjected to *law martial*, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service.

B. F. HALLETT.
L. MARCY.
H. WILLIAMS.

Mr. HALLETT. As this is a matter which is strictly legal in its character, I desire very briefly to explain the purpose of the Committee in making that Report. The Constitution of 1780 was adopted during the revolutionary war; our peace took place in 1783. At that time it was as a law of the camp, deemed necessary to have what is called the power of "martial law," or the "law martial," and it was accordingly inserted in the Bill of Rights rather as a limitation then, than as a power granted, that "no person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service, *but by authority of the legislature*."

It will be recollected that at one period during the revolutionary war, Gen. Gage proclaimed martial law in the city of Boston, and the inhabitants were smarting under the recollection of the violence and wrong committed under this law, because, as Blackstone says, martial law is the absence of all law. It was, therefore, provided in the Constitution which was framed in 1780, for the purpose of securing a greater degree of protection to the people, that that law should not be put in force except by the consent of the legislature. Now, when the State of Massachusetts came into the Union, and the Constitution of the United States recognized the military power as belonging to the United States, Massachusetts conceded that the power of martial law in the Commonwealth became entirely incident to the camp. So that as the present Constitution stands, this clause is wholly unmeaning, and is with but little or no force, except that in certain cases it is giving to the legislature a great, an alarming, and a despotic military power, which, if they choose to exercise, might result in a reign of terror, and in the most disastrous and pernicious consequences. I do not apprehend that they ever will exercise it; it is quite certain they never have exercised it; and even during that stormy and remarkable period known as Shay's Rebellion, when judges were turned out of their courts,

there was no resort to "martial law." But yet I am opposed; and it seems to me all who mean to restrain despotic power, should be opposed, upon principle, to allowing that power to remain; and I hope we shall now take the necessary steps to remove it. If gentlemen have made up their minds in regard to this subject, I have nothing farther to say; but if they have not, and as they ought to vote upon this question understandingly, I wish they would give me their attention for a few moments, and see whether or not this change which is proposed, is proper to be made.

Now, the first question which arises is, "what is martial law?" And here let me say that it is entirely different from "military law," and this is a fact which I wish military gentlemen to understand. It has no identity whatever with the courts martial held in the militia, or the navy and army. And the amendment which has been proposed by the minority of the Committee, leaves the matter so that no person can in any case be subjected to "martial law," except those employed in the army or navy, and except the militia in actual service. That is the only time when a martial law is required, and then it is the martial law of the camp—that law which General Jackson, in a great and overwhelming emergency, proclaimed at New Orleans; and yet, as the martial law of the camp, it left offenders in civil matters subject to all the penalties of civil law for any violation of civil rights. Now under the Massachusetts Constitution, as it stands at present, the legislature may pass what is called a territorial martial law, and may thus declare the whole territory of Massachusetts under such law; and this extends all over the State, and stops all civil remedies. To show what martial law is, I read from the seventh of Howard's United States Reports, (Luther *vs.* Borden,) where this subject is very deliberately considered by Judge Woodbury; and I am sure that no gentleman who will attentively read this opinion of that very learned judge, as it is here reported, will hesitate, for one moment, about striking out this authority given to the legislature to pass such a monstrous law, or rather a power to abolish all laws except those of a military despotism. He says:—

"How different in its essence and forms, as well as subjects, from the articles of war was the 'martial law' established here over the whole people of Rhode Island, may be seen by adverting to its character for a moment, as described in judicial as well as political history. It exposed the whole population not only to be seized without warrant or oath, and their houses broken open and rifled, and this where the municipal law and its officers and courts remained undisturbed and able to punish all offences, but to send prisoners, thus summarily arrested, in a civil strife, to all the harsh pains and penalties of courts martial, or extraordinary commissions, and for all kinds of supposed offences. By it, every citizen, instead of reposing under the shield of known and fixed law, as to his liberty, property, and life, exists with a rope round his neck subject to be hung up by a military despot at the next lamp-post, under the sentence of some drum-head court martial. (See Simmons's Practice of Courts Martial, 40.) See such a trial in Hough on Courts Martial, 383, where the victim on the spot was 'blown away by a gun,' 'neither time, place, nor persons considered.' As an illustration how the passage of such a law may be abused, Queen Mary put it in force in 1558, by proclamation merely, and declared 'that whosoever had in his possession any heretical, treasonable, or seditious books, and did not presently burn them, without reading them or showing them to any other person, should be esteemed a rebel, and without any farther delay be executed by the martial law.' (Tyler on Military Law, p. 50, chap. 1, sec. 1.)

"For convincing reasons like these, in every country which makes any claim to political or civil liberty, 'martial law as here attempted, and as once proclaimed in England, against her own people, has been expressly forbidden there, for near two centuries, as well as by the principles of every other free constitutional government.' (1 Hallam's Court Hist. 420.) And it would not be a little extraordinary, if the spirit of our institutions, both State and National, was not much stronger than in England against the unlimited exercise of martial law over a whole people, whether attempted by any chief magistrate, or even by a legislature."

This is the definition of martial law, by Judge Woodbury, and it shows the dangerous power which the Constitution places in the hands of the legislature. I hope that the amendment of the Committee will be adopted, and that we shall strike out that power to declare martial law over the whole people and territory of this Commonwealth.

The question was then taken on agreeing to the Report of the Committee, and it was decided in the affirmative.

The next question to be considered in Committee of the Whole, was the following Report of the minority of the same Committee:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 18, 1853.

The undersigned, a minority of the same Committee, also Report.

That there should be added to the fifteenth article of the Bill of Rights the following clause:

In all trials for criminal offences, the jury, after having received the instruction of the court,

shall have the right in their verdict of guilty or not guilty, to determine the law and the facts of the case.

B. F. HALLETT.
ANSON BURLINGAME.
CHARLES SUMNER.
L. MARCY.
CHARLES ALLEN.
H. WILLIAMS.

The question being on the adoption of the above Report,

Mr. HILLARD, of Boston, said that as this was a very important question, and one which would require to be discussed at length, he desired that it should be taken up at a time when the members were in a more refreshed condition than at present. The question of enlarging the powers and increasing the rights of juries was one of the greatest importance, and he would submit whether it would not be better for the Committee to rise and report progress, and take up something which would not require so much consideration.

Mr. WILSON, of Natick. I move that the Committee rise, report progress, and ask leave to sit again.

The question being taken on agreeing to the motion, it was, upon a division—ayes, 118; noes, 39—decided in the affirmative.

The Committee accordingly rose, and by their chairman, Mr. Schouler, reported to

THE CONVENTION,

That they had had under consideration the several Minority Reports of the Committee on so much of the Constitution as relates to the Bill of Rights, and had rejected the first Report, adopted the second Report, and upon the third and last Report no action had been taken; and the Committee accordingly ask leave to sit again.

Leave was granted.

The question then being on concurring in the Report of the Committee of the Whole, it was decided in the affirmative.

Mr. BUTLER, of Lowell. I move that the Committee of the Whole be discharged from the farther consideration of the third Report.

Mr. SCHOULER. I hope that motion will prevail, as the matter can be considered in Convention just as well as in Committee.

The motion was agreed to.

Mr. HALLETT, for Wilbraham. I move a reconsideration of the vote by which the Convention concurred in the Report of the Committee of the Whole, that the first Report of the minority be rejected, and upon that question I ask the yeas and nays.

Mr. LORD, of Salem. I would suggest to the gentleman representing Wilbraham, that it will be better to ask a division of the question now, and call for the yeas and nays upon the final passage.

Mr. HALLETT. I merely desire to have some stage where the yeas and nays can be taken upon this question of religious freedom. I was not quite rapid enough to keep track of the movements of the Convention.

The PRESIDENT. By permission of the Convention the Chair will state that the question is on concurring with the Report of the Committee of the Whole that the first resolution ought not to pass.

Mr. HOLDER, of Lynn, asked for the yeas and nays.

The yeas and nays were ordered. The question then being taken on concurring in the Report of the Committee, it was decided in the affirmative by the following vote—yeas, 133; nays, 107.

YEAS.

| | |
|---|---|
| Adams, Benjamin P. | DeWitt, Alexander |
| Aldrich, P. Emory | Doane, James C. |
| Alvord, D. W. | Durgin, John M. |
| Andrews, Robert | Eames, Philip |
| Aspinwall, William | Edwards, Elisha |
| Atwood, David C. | Edwards, Samuel |
| Ayres, Samuel | Ely, Homer |
| Barrows, Joseph | Eustis, William T. |
| Bartlett, Russel | Foster, Aaron |
| Bartlett, Sidney | Foster, Abram |
| Bennett, William, Jr. | Fowle, Samuel |
| Boutwell, George S. | Freeman, James M. |
| Bradbury, Ebenezer | Gale, Luther |
| Brinley, Francis | Gilbert, Wanton C. |
| Briggs, George N. | Giles, Joel |
| Buck, Asahel | Goulding, Dalton |
| Bullock, Rufus | Goulding, Jason |
| Cady, Henry | Gray, John C. |
| Carter, Timothy W. | Griswold, Josiah W. |
| Caruthers, William | Hale, Artemas |
| Chapin, Daniel E. | Hale, Nathan |
| Chapin, Henry | Hammond, A. B. |
| Childs, Josiah | Hapgood, Lyman W. |
| Churchill, J. McKean | Harmon, Phineas |
| Clark, Salah | Haskins, William |
| Cleverly, William | Hayward, George |
| Cogswell, Nathaniel | Hersey, Henry |
| Cole, Lansing J. | Hewes, James |
| Conkey, Ithamar | Hinsdale, William |
| Crittenden, Simeon | Hobart, Henry |
| Crosby, Leander | Hobbs, Edwin |
| Cross, Joseph W. | Houghton, Samuel |
| Crowell, Seth | Howland, Abraham H. |
| Crowninshield, F. B. | Hunt, William |
| Cushman, Thomas | Huntington, Charles P. |
| Dana, Richard H., Jr. | Hurlburt, Samuel A. |
| Davis, Solomon | Hurlbut, Moses C. |
| Dawes, Henry L. | James, William |
| Dean, Silas | Jenkins, John |
| Denison, Hiram S. | Johnson, John |

Kellogg, Giles C.
Knight, Joseph
Kuhn, George H.
Langdon, Wilber C.
Lincoln, F. W., Jr.
Littlefield, Tristram
Livermore, Isaac
Loomis, E. Justin
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morton, Marcus, Jr.
Morton, William S.
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parker, Adolphus G.
Parker, Joel
Plunkett, William C.
Pomroy, Jeremiah
Preston, Jonathan
Rawson, Silas
Read, James
Reed, Sampson
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Royce, James C.
Sanderson, Amasa
Sargent, John
Sikes, Chester
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Sumner, Increase
Talbot, Thomas
Turner, David
Tyler, William
Wales, Bradford L.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
White, George
Wilder, Joel
Wilson, Milo
Winn, Jonathan B.

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Austin, George
Baker, Hillel
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Beal, John
Bird, Francis W.
Booth, William S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Burlingame, Anson
Butler, Benjamin F.
Case, Isaac
Chandler, Amariah
Clark, Ransom
Clarke, Alpheus B.
Cole, Sumner
Davis, Ebenezer
Day, Gilman
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Earle, John M.
Easton, James, 2d,
Ely, Joseph M.
French, Charles A.
French, Samuel
Frothingham, R., Jr.
Gilbert, Washington
Giles, Charles G.
Gooch, Daniel W.
Green, Jabez
Hallett, B. F.
Hawkes, Stephen E.
Hazewell, Charles C.
Hillard, George S.
Holder, Nathaniel
Hopkinson, Thomas
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Hyde, Benjamin D.
Jackson, Samuel
Kendall, Isaac
Knight, Hiram
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Little, Otis
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Newman, Charles
Nichols, William
Nute, Andrew T.
Osgood, Charles
Partridge, John
Perkins, Daniel A.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Ring, Elkanah, Jr.
Ross, David S.
Schouler, William
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Swain, Alanson
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Underwood, Orison
Viles, Joel
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Warner, Samuel, Jr.
Weston, Gershom, B.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Wood, Charles C.
Wood, Otis

ABSENT.

Abbott, Alfred A.
Allen, Charles
Allis, Josiah
Appleton, William
Ballard, Alvah
Ball, George S.
Banks, Nath'l P., Jr.
Bates, Eliakim A.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Braman, Milton P.
Brewster, Osmyn
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Bullen, Amos H.
Bumpus Cephas C.
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clarke, Stillman
Coggin, Jacob
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.
Cutler, Simeon N.
Davis, Charles G.
Davis, Isaac
Davis, John
Davis, Robert T.
Dehon, William
Dorman, Moses
Easland, Peter
Eaton, Calvin D.
Eaton, Lilley
Farwell, A. G.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
French, Rodney
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gooding, Leonard
Gould, Robert
Graves, John W.
Greene, William B.
Greenleaf, Simon
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hapgood, Seth
Haskell, George
Hathaway, Elnathan P.
Hayden, Isaac
Heard, Charles
Heath, Ezra, 2d,
Henry, Samuel
Hewes, William H.
Heywood, Levi
Hobart, Aaron
Hood, George
Hooper, Foster
Hubbard, William J.
Huntington, Asahel
Huntington, George H.
Ide, Abijah M., Jr.
Jacobs, John
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden

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|---|---|
| Lincoln, Abishai | Rogers, John |
| Lord, Otis P. | Sampson, George R. |
| Lothrop, Samuel K. | Sanderson, Chester |
| Loud, Samuel P. | Sheldon, Luther |
| Lowell, John A. | Sherman, Charles |
| Marcy, Laban | Sherril, John |
| Marvin, Abijah P. | Simmons, Perez |
| Marvin, Theophilus R. | Sleeper, John S. |
| Meader, Reuben | Stacy, Eben H. |
| Moore, James M. | Stevens, Joseph L., Jr. |
| Morss, Joseph B. | Stevenson, J. Thomas |
| Morton, Elbridge G. | Storrow, Charles S. |
| Morton, Marcus | Stutson, William |
| Nash, Hiram | Taber, Isaac C. |
| Nayson, Jonathan | Taylor, Ralph |
| Norton, Alfred | Thomas, John W. |
| Ober, Joseph E. | Tileston, Edmund P. |
| Orne, Benjamin S. | Tilton, Abraham |
| Paige, James W. | Tower, Ephraim |
| Park, John G. | Train, Charles R. |
| Parker, Samuel D. | Tyler, John S. |
| Parris, Jonathan | Upham, Charles W. |
| Parsons, Samuel C. | Upton, George B. |
| Parsons, Thomas A. | Vinton, George A. |
| Payson, Thomas E. | Walcott, Samuel B. |
| Peabody, George | Walker, Samuel |
| Peabody, Nathaniel | Ward, Andrew H. |
| Pease, Jeremiah, Jr. | Warner, Marshal |
| Penniman, John | Whitney, Daniel S. |
| Perkins, Jesse | Whitney, James S. |
| Perkins, Jonathan C. | Wilbur, Daniel |
| Perkins, Noah C. | Wilbur, Joseph |
| Powers, Peter | Wilkins, John H. |
| Prince, F. O. | Wilkinson, Ezra |
| Putnam, George | Williams, Henry |
| Putnam, John A. | Winslow, Levi M. |
| Rantoul, Robert | Wood, Nathaniel |
| Rice, David | Wood, William H. |
| Richardson, Nathan | Woods, Josiah B. |
| Rockwell, Julius | Wright, Ezekiel |
| Rockwood, Joseph M. | |

Absent and not voting, 179.

So the Report was concurred in.

The next question being on ordering the amendment reported by the minority of the Committee, on the subject of martial law, to a second reading.

Mr. DANA, for Manchester. The Convention will perceive that only three members of the thirteen who formed the Committee have signed this Minority Report, and the conclusion of course will be that the other ten had some reason for withholding their names. If gentlemen will turn to the twenty-eighth article of the Bill of Rights, they will find that it reads as follows:—

"No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature."

It is proposed by the minority of this Committee to strike out the words "but by authority of the legislature." The question, of course, arises, what is the object of this amendment? The Committee which had the matter under consideration, did not think this a proper amendment to the Constitution, because we believed that it ought to be in the power of the Commonwealth to proclaim martial law whenever circumstances should render it necessary. We all hope and pray that it may never be needed, but the question is, whether there shall be vested in the legislature this power, to be used in case of any great emergency? For my own part, I can see no reason why we should strike out this clause from the Constitution. It has never been abused, and there is no danger that it ever will be; and I believe that we should therefore allow it to remain. The question is not whether martial law is necessary or unnecessary, but whether the power to proclaim it shall exist as it has heretofore existed in our Commonwealth. The fears of gentlemen will be allayed, by considering the process which must precede the declaration of martial law. The bill must pass the House of Representatives, then the Senate, and afterwards go to the hands of the governor and be signed or rejected by him. I cannot but think that if the Convention consider this subject more maturely, they will concur with the Committee.

Mr. HALLETT. The gentleman has not explained to the Convention, if I understood him, what martial law is; but he asks, is it possible that you will take from the legislature, who have so long held it, the power of proclaiming martial law? Now the question which we should ask ourselves is this: "Shall we, or shall we not, take from the legislature the power of abrogating all law, and proclaiming itself a dictator?" for, as Blackstone says, martial law is the abrogation of all law; it is putting territory under military authority.

The gentleman says there may be a necessity for this. When it is so, it will be equally necessary for us to do as they did in the Roman Republic—proclaim a Dictator.

Mr. BUTLER, of Lowell. I am unwilling that this question shall be taken, without the fullest understanding of the subject; and in order that I may at least, present my views for the correction of other gentlemen, I will state a few words in regard to what I understand to be the principles of the subject under discussion. The question in dispute seems to be, whether or not the Convention are ready to say, that to the legislature shall be given the power at any time when it may best suit them, to take any citizen of this Commonwealth, however peaceably disposed, and without judge or jury, to try him, and hang him on the first tree! If you are ready for that, I am willing to take my chance with the rest. [Laugh-

ter.] That is just the question which we are to decide upon. Martial law, as I understand it, is this: that whenever either the legislature, or in some countries the general, chooses to proclaim martial law, from that moment the military chief is the only judge, the drum-head the only trial, and the provost-martial the only executioner. The gentleman for Manchester says, if a man is going to be hung, he may as well be hung by martial law, as by any other.

Mr. DANA. I beg pardon of the gentleman for interrupting him, but what I said was, that it was as well to be hung by martial law, as by no law.

Mr. BUTLER. I accept the amendment of the gentleman. Martial law then, is no law; it is the abrogation, as the gentleman for Wilbraham has said, of all law. Now, the moment a city gets to be a camp, we shall have martial law, and not before; and as such, the law martial may be proclaimed by the declaration of the commanding officer. But when so declared, it can only apply to the officers and soldiers under his command, and those who are in actual service and have consented to be governed by such a law, in any great emergency that may arise. Now, let me ask, what shall be done with five thousand insurrectionists, who may be disturbing the public peace, and laying waste the public property? Why, we will assail them, cut them off, destroy them, get them hanged, take them prisoners, and then, we will try them fairly and openly in our courts in as independent a manner as the lot of humanity will permit, before the judges whom my friend wanted to be elected for life.

Sir, I trust there is no lawyer in this body who is not sound in regard to the explanation of martial law; and as for myself, I am unwilling to have the power of proclaiming such a law placed in the hands of the legislature, except so far as it may affect those persons in actual service. Soldiers and sailors may be subject to martial law if they please; but I am unwilling that the little child, the infant in the cradle, the wife and the mother, shall come within its reach, to be hung up and whipped, to suit the capricious and brutal fancy of a second Haynau.

Mr. BRIGGS, of Pittsfield. I do not believe that in these days of progress and civilization, we stand in much danger of being hung up and whipped under a martial law, by a second Haynau, or anybody else. The experience of the past has shown that this power has never been brought into requisition, although at one period of our history, at the time of Shay's Rebellion, there was as much need for it perhaps, as there has ever been since, not excepting a recent crisis which arose, when the army and navy of the United States were directed to turn their attention towards this rebellious city. It is not impossible, however, that circumstances may arise in future, which will require martial law to be proclaimed in Massachusetts; but does any one doubt for a moment, that here, in this goodly Commonwealth, a proclamation will be made that all citizens from Boston Corner down to Hull shall cease to be under the civil law, and that every man, woman and child, shall be subject to a court martial for any charge brought against them? I do not believe that there is the remotest probability of such a state of things taking place; and therefore, I confess, though I have a great reverence for ancient things, I have no desire to see the martial law among the people. The history of our country presents but little encouragement to the continuation of such a law in our Constitution. It has seldom been proclaimed; I remember but a single instance, and that was in the city of New Orleans in the war of 1812; and I am sorry to say that there were transactions during that period which I wish, for the glory and renown of the individual who proclaimed it, could be expunged from the history of the country. That same individual said, that if Massachusetts had been within his military district, he would have hung every delegate. That is martial law; its process is summary; the trial is before a court martial, and not before a court of law; there is no great time spent in examining or cross-examining the witnesses, but the case, however important it may be, is brought to the most speedy termination. For these reasons, I think it would be entirely safe for this clause to be stricken out of the Constitution. As Burke once said, in speaking of the veto power in England, its preservation and repose may at some time result in great good. He said that that power for more than one hundred and thirty years had been unused, and its very repose had probably preserved the country. And so would I say in regard to this martial law, if there was the slightest probability that it would be the means of preserving the Constitution and the Commonwealth; but I do not believe there will ever be a need for it within the boundaries of our State; and I am, therefore, inclined to vote for the amendment of the Committee, and have the clause which provides for the proclaiming of the martial law by the legislature, stricken from the Constitution.

Mr. OLIVER, of Lawrence. I do not propose to occupy but a few moments in discussing this subject. I merely desire to say that I shall vote for the amendment which has been proposed by my friend for Wilbraham, on the part of the

minority of the Committee, and I shall do so from the principle which has ever guided me, of endeavoring to keep everything of a military character distinctly subordinate to the civil power. As it has already been observed, the law martial travels with the military array, and wherever the military are, there, too, is this law. But the question is asked, if your law martial has reference only to the military, what shall be done with traitors who may be found inside the lines? I reply, they would be subject to arrest, but to arrest only; for they would not be tried by the law martial, but be turned over to the civil authorities, to be dealt with by them.

Mr. SCHOULER. I would inquire, if the civil authorities were on the side of the enemy, what would you do then; and who are to try such cases then?

Mr. OLIVER. I think that a case like the one supposed by my friend, could never occur. I do not believe that the circumstances could possibly happen, when the whole community who do not belong to the military organization, would be found to be traitors.

Mr. SCHOULER. My question was, what are you going to do in case the civil authorities are traitors?

Mr. OLIVER. I cannot inform the gentleman, for such a state of things is entirely beyond my comprehension. At any rate, I think the community will be perfectly safe if we omit this provision in the Constitution, as has been proposed by the Committee. Although I have been connected, for many years, with the militia of our State, I have a disrelish for anything which tends to place it in a prominent position; and, as I said before, I shall seek every opportunity of keeping it strictly subordinate to the civil law. For these reasons I shall vote for the amendment which has been proposed by the gentleman for Wilbraham.

Mr. SCHOULER. I do not suppose it is very probable that the circumstances will ever arise that will make it necessary for the martial law to be proclaimed; but still, I can conceive the possibility of such an exigency, and so long as this exigency exists, I am unwilling to have this clause stricken out. I do not believe that the legislature would ever exercise that power unless there was an urgent necessity for it, and then it would not by any means be so stringent in its operation as some gentlemen would make us suppose. We do not know what may happen in time, but at any rate, it is best we should be provided for any emergency that could arise. So long as there is no necessity for it, of course it will be a dead letter in the Constitution; but if the necessity should arise, we shall be provided for it. I am, therefore, opposed to the amendment which has been submitted by the Committee, and hope that it will not be adopted.

Mr. HALLETT, for Wilbraham. I do not feel that I can sit still after the allusion which has been made by the gentleman from Pittsfield, to the memory of one of the greatest men and patriots who ever lived in our country, without making some reply. Sir, I believe that that gentleman entirely mistook the character and conduct of General Andrew Jackson. That distinguished man, in his proclamation of martial law in the city of New Orleans, though he did it upon his own responsibility, saved his country and his country's honor at a moment when the legislature of Louisiana, assembled in New Orleans, were deliberating upon the propriety of surrendering that city to the enemy without striking a blow. He took this step, proclaimed martial law, and arrested that inglorious act. Yet, the gentleman says it was a stain upon his memory, and upon the history of the country! What, Sir, would have been the stain, if instead of the glorious victory which now graces our annals, we should have had a disgraceful defeat, and a surrender of our forces to Packenham? He took upon himself the responsibility, as a great man will ever do on a great occasion, and defended and saved his country's honor. And when that was accomplished, what did he do? He went into court, threw down his sword, and was tried for an infringement of the existing law. He paid his fine and passed out of the court, suppressing any attempts on the part of his friends who were there assembled, to interfere with that decision; because he well knew that it was the principle of his country to hold the military in subservience to the civil power. Time went on; party feeling passed away, and there now stands upon the records of the national legislature that act which refunded the fine which Andrew Jackson paid. That was the martial law then, and I ask, shall we allow to remain in our Constitution a provision which vests in the legislature alone the power of proclaiming the martial law. If necessary at all, give that power to the commanding officer; for as Livingston, one of the ablest of political writers has said, whenever a General attempts to declare martial law upon his own responsibility, if he is successful, and protects his country, his country will protect him; and if he does violence and wrong, the laws will punish him. That is the only martial law I want to see in this free country.

Mr. GRAY, of Boston. I do not feel qualified to speak upon this question at length, because I

do not know that I am aware of the precise distinction between the law martial and the military law; but I desire to refer to another part of the Constitution, which has not yet been adverted to. I find in chapter 6, article 7, the following clause:—

"The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months."

Now, my question is this: If we say that the law martial ought not to be permanently established, ought we not likewise to say that this power of suspending the *habeas corpus* shall not be given to the legislature? If the legislature are allowed the power to suspend one of the greatest rights and priviliges of a citizen, ought not the same reasons to operate for the retention of the clause in question?

These are my views in regard to the subject, though I must confess my ignorance, as I said before, in regard to the merits of the question.

Mr. BATES, of Plymouth, demanded the previous question.

The demand for the previous question was sustained, and the main question ordered to be now put.

The question being on ordering the resolution reported by the Committee to a second reading, it was taken, and upon a division—ayes, 73; noes, 41—decided in the affirmative.

On motion by Mr. PLUNKETT, of Adams, the Convention then, at twenty-five minutes to seven o'clock, adjourned.

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WEDNESDAY, July 27, 1853.

The Convention assembled, pursuant to adjournment, and was called to order by the President at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

*Distribution of Books.*

The order introduced yesterday, by the gentleman from New Braintree, (Mr. Mixter,) directing the distribution to the towns not represented of a copy to each of the new Constitution, and of the Journal of the Convention, and of that of 1820, was taken up for consideration.

Mr. MIXTER moved to modify the order by substituting the following:—

*Ordered*, That each of the towns in this Commonwealth that have not sent a delegate to this Convention shall be entitled to receive one copy of Barnes's Constitutions of the United States, one copy of the Journal of the Massachusetts Convention of 1820, and one copy of the Journal and Debates of this Convention.

Mr. MIXTER remarked that it had been suggested to him that the towns which are not represented here would not be furnished with these books, unless some special action were taken in regard to it. The members of this Convention would doubtless take care that their own towns were supplied, but those unrepresented, although equally entitled to receive them, inasmuch as they would be called upon to pay their proportion of the expenses, would, without some such order as this, be unsupplied.

Mr. EARLE, of Worcester. I have but one objection to the adoption of the order that is proposed, and that objection is, that I believe we have no power to do it. It appears to me we have just as much right to make an appropriation for any other object as we have for this; as much right to vote an appropriation for any purpose under the sun, as to do what is proposed by this order.

Mr. WALKER, of North Brookfield, remarked that it certainly appeared to him that the towns having no representatives here were as much entitled to have these books for their information, as those which are represented.

Mr. BUTLER, of Lowell, moved that the order be laid upon the table.

He withdrew the motion, at the request of

Mr. BRIGGS, of Pittsfield, who moved to amend the order, so that it would read, that "the Secretary of the Convention be directed to send to each of the towns," &c.

Mr. ALDRICH, of Barre. I would inquire whether it will be possible to execute this order? It proposes to supply these towns with a copy of the Debates of this Convention. I ordered three copies at the commencement, and this morning I went to buy three more copies, and bought them at a premium upon the ordinary cost. I understand that it will be difficult to procure them.

Mr. SARGENT, of Cambridge. I would ask if the Convention did not order a sufficient number, so that they would have enough on hand to enable the Secretary to comply with this order?

The PRESIDENT. The Chair is informed that there is another edition to be published, from which this order could be filled, if the Convention so determine.

The amendment of the gentleman from Pittsfield was agreed to.

The question being on the adoption of the order, as amended,

Mr. BATES, of Plymouth. I shou'd like still farther to amend this order. I suppose the Convention of 1820 voted to each town in the Commonwealth a copy of its Debates, and that that copy is in the hands of the clerk of such town. This proposition is to supply those towns which are not represented here. Now, I would propose that, so far as relates to the Debates and Proceedings of this Convention, they be distributed to all the towns, one copy to each. It may as well be done under this order as at any other time. If we so order now, it will prevent the necessity for another order in reference to that matter.

Mr. MIXTER. I do not know but that the Convention of 1820 did order the distribution of their Proceedings to all the towns in the Commonwealth, but I do happen to know that there is no copy of those Proceedings in the town in which I live. I have had occasion to examine the books belonging to that town, and I have never seen a copy of those Proceedings.

Mr. SARGENT, of Cambridge. In reply to the remarks of the gentleman from Plymouth, I will say, that my impression is that we ordered a certain number of copies, one portion thereof to be distributed among the members, another portion to be placed in the hands of the Secretary of State, to be distributed as the Convention may direct.

Mr. BRIGGS. I hope the gentleman will allow this order to pass, so as to provide for the towns that are not represented; and in reference to those that are, their representatives will undoubtedly take care of them.

The amendment was agreed to, and the order, as amended, was adopted.

*Rights of the Jury.*

On motion of Mr. WILSON, of Natick, the Convention proceeded to consider the unfinished business on the Orders of the Day, being the resolve on the subject of the rights of the jury.

The pending question being on the final passage of the resolve.

Mr. BURLINGAME, for Northborough. Mr. President: There is so little time to discuss this question, that I scarcely know where to commence. I do not complain, however, for I am most anxious to bring the labors of the Convention to a close. But inasmuch as the time for discussion is so limited, I ask the ear of the Convention while I shall occupy its attention—not for my sake, but for my cause's sake—in behalf of a most important right. I shall speak as rapidly as I can, so that I may crowd as much as possible into the brief space allowed me.

The minority of the Committee, in asking you to adopt their Report, do not urge you to declare any new doctrine, but to recognize the old common law rights of juries. We do not wish to assail judges, nor to reflect upon them, but rather to relieve them from the imputations to which they might otherwise be subjected. Inasmuch as they do not now agree among themselves, as to the extent of their powers, it is our duty, as it is our right—for their good, and for the general safety—to define them, to bound their sphere of action, to state the law which is to guide them so clearly that they can never misunderstand it; so that juries will know their duty, and counsel how far to go, and the whole people their rights.

Because in civil cases the judges give the law to juries, and because in criminal cases they instruct them in the law—which duty we do not desire to relieve them from—juries have become to believe, and the whole community along with them, that they can do no otherwise than follow the instructions of the court, whether those instructions be right or wrong. It is because this is so, because judges have, in some instances, in these latter days, usurped the rights of juries, denying to them, in the pride of position and the pride of learning, the right, in criminal cases, to pass upon the law and the fact, it becomes necessary, if we would save the great right of trial by jury in its integrity, either by legislative enactment or by more solemn expression in the fundamental law, to declare the right of juries, especially in criminal cases. This has been found necessary many times heretofore. Burke states that, up to his time, in England, over forty acts had been passed guarding the rights of juries; and in our own country, our State and National statutes are full of provisions tending to the same end.

I did intend, and it would have been my pleasure, had this subject arisen earlier, to trace rapidly the most interesting history of trial by jury, from the first glimmer of anything like it in the classic land, and in the warrior land, to its greater development among the blue-eyed sons of the north, along the Baltic, and at last to its practical and complete realization by the mingled and mingling races of the British Isles and this continent. In this history its great value would be revealed to us, and we should see why we ought to resist, with all our strength, the first attempt to impair its vigor. As it is, I must content myself with a few statements and views, which I hope will be found sustained by precedents, and vindicated by reason and common sense.

In the first place, then, I contend that the doctrine of the Report is sound law; that it has stood against all assaults, for hundreds of years. Judges have so decided, commentators have so expounded, historians have so recorded, and statesmen have vindicated and eulogized this doctrine. There are ten precedents in its favor where there is one against it. Nearly all of the great lights of the English and American law shine out in its favor. The great writers, from Bracton to Blackstone, Littleton to Coke, and later, and the brilliant advocates and the great judges are for it —Holt, and Hale, and Vaughn, and a host of others. We have in this country nearly all of the judges, from the beginning to the present time, in its favor—Marshall, Jay, and Kent; and in this State, until recently, the unstained ermine, the united voice of the court—Parsons, Putnam, and Morton, and the present chief justice himself, until the extraordinary reasoning, not decision, in Commonwealth *vs.* Porter, a case where the authorities on this subject, *pro* and *con.*, may be found. In short, there is one great stream of authorities in its favor, flowing down through centuries. Indeed, it was never denied, except in libel cases, and in these not long. It was undoubted at the Revolution, and in colonial times, juries frequently called upon by-standers to testify as to the law.

There are but two great authorities on the other side—Mansfield, in England, and Story, in this country. Mansfield, as an authority, was killed, by act of parliament, by Fox's bill; Story's decision, in this country, still stands, but like a leaning tower, toppling to its fall. I say there are but these two of commanding importance. There are a few others in England and this country, but they are lost in the shadow of these. I ought to say there is a respectable authority against this doctrine, in New Hampshire, which I should not forget to mention, inasmuch as the judge who delivered it is an honored member of this Convention, (Mr. Parker, of Cambridge). There is Durfee, in Rhode Island, and a few inferior judges in other States have decided, sometimes one way, and sometimes another; and a judge of the supreme court of the United States, has decided both ways; but the authorities largely preponderate in favor of the doctrine we maintain.

I said Mansfield's authority was destroyed by Fox's bill. In this country we have followed the doctrines of that act; and if you will look over the Constitutions, and through the statutes of the several States, you will find that in nearly all it is declared that in cases of libel the juries shall have this right "the same as in other cases"; these words "the same as in other cases," clearly recognizing the right to pass upon the law and the fact in all other criminal cases. I will not insult you by citing, as an authority for the opposite doctrine, my Lord Jeffreys, that bloody villain, who, in the trial of Algernon Sydney, told the jury they must take the law from him, and, forcing them by threats to do so, judicially murdered that noble man. There have been ship-money judges and dispensing judges, and such scoundrels as Scroggs; but I need not wound those who may oppose us here, by stating on which side of this question they were found. Again, I say, the Report we have made is sustained by the precedents; and that you may not rely upon my declarations alone, I beg to refer to Mittermaier, professor at Heidelberg, the greatest living jurist, who has just published a book, not yet translated into English, upon the English, Scotch, and American criminal law. He, after a searching examination of all the authorities, states —and I have the extracts here, translated for me by a German friend of mine interested in this subject (B. Roelker)—Mittermaier states, I say, that in the United States, England, and Scotland, juries have the right to pass upon the law as well as the facts, in criminal cases. He goes into a history of the law in relation to this subject, and cites hundreds of authorities to maintain this proposition. Even those judges who deny to juries this right, admit their power to exercise it. Mansfield first, and Story following him, and taking his very language, adopting his dead decision to bind it upon the living back of America; and Shaw, arguing in favor of the same doctrine, all admit the *power* of juries to pass upon the law and the facts, but intimate that they have no right to exercise it.

Now, with all due deference to these learned judges, I submit that it borders on the absurd to say juries have the power but not the right. Does the law stultify itself by conferring a power without a right to use it? If they have the power it is a legal power, and the legal presumption is that it is a rightful power. If it is wrong for them to exercise it, then where is your remedy? It is said there is no wrong without a remedy. Where is it in this case? Suppose the jury does not choose to follow the court; what can the judge do—can he punish? No; he cannot touch a single juryman; the verdict of not guilty concludes the whole matter; the prisoner goes free and forever. If juries have not the right we claim for them, then why are counsel allowed to address them upon questions of law—a right never but in two or three cases (since overruled) denied them—why should they be permitted to persuade the jury to do wrong? A man cannot

plead ignorance of the law as an excuse for its violation; he is presumed to know the law; and yet the jury which is to try him—which is to determine his guilt or innocence—is to be presumed ignorant of the law he is to be punished for violating—ignorant, after hearing the counsel and the judge. Surely this position against us cannot be maintained. Then it may be said—indeed, it has been said—that because judges are clothed with power to pass upon questions of law, preliminary and subsequent to the trial, that therefore they have exclusive power. Now, I maintain that they have scarcely any power which they can exercise against the prisoner. All the powers lodged with them are for his benefit, *in favorem vitæ*. Is it not for his benefit that the judge shall determine what evidence shall go to the jury? This is a power not likely to be abused. Is it not for his benefit that the indictment be quashed—that a demurrer be argued—that exceptions be taken—that a new trial, in case of conviction, be granted? What one of these humane powers, which can be only exercised in favor of life and liberty, does our proposition take away? It leaves the judge all power for good, but none for evil, none for caprice, none for oppression. We wish to throw around the citizen every guard. The judge shall be his friend, and the grand jury and the traverse jury; and a new trial shall be granted if the verdict is against evidence. But be it ever remembered that this can only be granted in criminal cases, where the verdict is against the prisoner. Such is the humanity of the law, and who would have it otherwise? Thus our doctrine is sustained by precedent, sanctioned by reason, and commended by humanity. If it had no higher claim for our support than its age, nothing but precedent to recommend it, I would not advocate it here.

The opposite doctrine, in the first place, assumes that all judges are pure, that all juries are corrupt—that judges are always wise, and that juries are always ignorant. Now, I assume that both are honest, and I say one honest judge is as likely to be corrupted as twelve honest jurymen. Let history decide the question. Let us admit that the judge and the jury are equally able to meet the requirements made of them, and equally desirous of performing their duty according to law; which, in the long run, taking human nature as we find it, ought we to trust with the great interests of humanity? Let history answer. I appeal to it confidently; does it not show, that whenever there has been a conflict between judges and juries, the juries have always been right and the judges always wrong? When kings were cruel and courts were corrupt, the jury remained kind and pure; in its generous bosom the victim of oppression found safety and protection. Again and again it has stood like a rock against tyranny. The things of which we most boast were saved by it. Freedom of speech and freedom of the press, and the long list of our rights and privileges. So it was and so it is now. Recently, in England, when the Earl of Derby, then Prime Minister, menaced the refugees from continental oppression, the press of England, with the *Times*, its great thunderer, at its head, informed the haughty earl that it was not for him to admonish and threaten—it was not for him to say who should visit England, or how long he shou'd remain, or when he should take his departure. These were questions to be determined by a jury, and the declaration rang from side to side that no man, no matter what his clime or what his color, could be touched in his property or in his liberty, save through the warm heart of an English jury.

I need not remind you how many times, even in our free land, the fierceness and fanaticism, the madness of party, and the tyranny of wealth, have lost their victim in the jury-box. How often unjust laws have been stayed from cruel execution, or been made to sleep by juries until they were swept from the statute book by the roused spirit of the people. Let no man think that I would ask a jury to shield the citizen from a just law. You say who is to determine its justice? I reply, an honest jury, instructed by an honest judge. If a law, or what is called law, outrages all rights and the public conscience, clergymen may preach, and judges may instruct until they are hoarse, juries will never convict under it. This is a fact, and he is unwise who fails to recognize it. But let this be said of juries, and to their honor, when judges have many times struggled with great zeal to convict under cruel laws, if juries have failed in these cases to respond with their verdict, it has never been wanting against the violator of a just and wholesome enactment.

It may be said, if in civil cases the jury take the law from the court, why not in criminal cases? Because the rules that govern them are not the same. The law relating to property is artificial and technical, and there is little motive for tyranny. The criminal law, on the other hand, is easily understood. The indictment must set out the charge clearly and singly, and then, after the counsel have addressed the jury, and the court instructed them on one single question, if they cannot understand the law they must be ignorant indeed. After this is done, it is their right and duty to complicate law and fact, and to bring in a general verdict of guilty or not guilty. They may, if they choose, return a special verdict; but this

the court cannot require, and this is still another proof that they have a right to pass upon the law as well as the fact. If the court is to determine the law, then I submit that the trial by jury is little better than a farce; then a man is no longer tried by his peers, as is his right, but by the judge, who may give the law the hue of his own mind. The judge may be his bitter enemy, but still he must take his chance; he cannot challenge him, as he can a juryman, and exclude him.

Some men seem to think that the moment a man is placed upon the bench, all human passions depart from him, and all wisdom rushes in to take their place. Now I have considerable reverence, but I never could understand this blind adoration of those who chance for the time being to be judges. I never supposed, nor do I now suppose, all wisdom will die with them, that their removal would suspend the laws of nature, and cause the moon to fall, or the stars to rain down from heaven. I take it judges sometimes get disturbed—that they have their likes and their dislikes; and it is said, some of them frequently get angry; and that they hate reformers so much that it would, at times, be difficult for them to detect enough of the gentle quality "mercy" in any law they could apply, to save one from prison or the gallows.

Of this I feel quite sure—I should prefer to take my chance for life or liberty, with twelve of my friends and neighbors—to let them determine the fact and the law, the violation and the intent—rather than to be in the power of any one man, no matter how kind his heart.

If any man in this Convention should say the people are not competent to make the laws by which they are to be governed, we should all denounce the imputation; and yet, there are many here who seem to doubt their capacity to interpret the laws made by themselves when transferred from this or any other place to the jury-box. We do not trust the making of our fundamental laws to judges. Why not, if they alone can understand them? Here we rely somewhat upon the wisdom of those who are or who have been judges, but we do not follow them blindly. So jurymen, when judges state the law correctly, will be happy to be guided by them; but when from ignorance, or bigotry, or dishonesty, they misdirect and falsely state the law, then the jury must be its defence, as well as the shield of the citizen.

It may be said juries differ in their verdicts. Do judges always agree? Let the volumes of overruled cases answer. The doctrine for which we contend is not in quiet times appreciated. When human affairs are unsettled, when party rages, when majorities rule at the centre, and madness takes possession of accidental presidents, and governors, and judges, then it is the jury shines out as a beacon of safety. The friends and neighbors of a man, made up of every party, form a wall of hearts about him, through which no tyranny can reach him.

In closing, let me pray you not to decide against us hastily; and I appeal for a hearing and for support, to my own party friends. I claim them for this great right, because of their devotion to that liberty it is intended to guard. I claim the reformers of every party. I hold them to their professions. I claim the conservatives, because they would cling to the ancient ways. Here is the pure gold. Here is a doctrine that has stood the blasts of centuries. I call upon my professional brethren to stand by it. They know it is the law. Let them no longer, in this Convention, subject themselves to the charge of opposing everything the people desire. I know our profession has always been sensitive to anything touching the laws and their administration.

I believe it was Chatham who, because of this sensitiveness of lawyers, launched at them, in substance, this sarcasm. I do not remember the precise words, but it was something like this, he said: "The whole empire might shake from its centre to its circumference, and every lawyer would remain quiet in his cell; but touch one thread of the law, and every spider in Westminster Hall would crawl forth in its defence." I think the sarcasm is unjust, for wherever liberty and humanity have needed defenders they have found them in our ranks. We may point with pride to Tronchet, Deseze, and Malesherbes, defending an old king deserted by all the world, at the risk of their lives; to Erskine, standing up bravely for the doctrine we advocate, between an angry judge and a quailing jury; to Curran, in the midst of arms, breathing forth those last words of defiance ever heard in his native land; to Otis and Adams, arguing writs of assistance one day for the people, and then stemming their wrath by defending the soldiers who caused their blood to flow in King Street. I say the sarcasm is unjust. But I see my time is about up. Again I urge the Convention to adopt the Report of the Committee; it will then have done something to guard the rights of the people.

[Here the President's hammer fell, the time to which the speaker was entitled, under the order of the Convention, having expired.]

Mr. RANTOUL, of Beverly. There is one case to which the gentleman for Northborough, (Mr. Burlingame,) did not refer, in which the court instructed the jury that if they had doubts

of the law, they were bound to receive the law from the court; that they had the *power*, but not the *right* to do otherwise. This was in the case of an indictment against Abner Kneeland, in Suffolk County, about twenty years ago, at which trial Judge Wilde presided. It may be that I have not seen a correct version of the facts; but as I have seen the case reported, the judge so instructed the jury. This case occurred to my mind, while the gentleman last up was speaking, and I thought I would suggest it to the Convention.

As long ago as 1771, President John Adams discussed this subject, and decided that the jury had the right to determine the law, as well as the facts.

In 1802, when Judge Chase, of the Supreme Court of the United States, was impeached, one of the charges against him was, that he denied to the jury the right to determine the law, as well as the fact. Upon this charge, however, he was acquitted. He proved, by evidence, that he had never interfered with the jury in that respect; but that on the contrary, he had argued that the jury had that right; that it was an ancient and a sacred right, and one which should not be interfered with.

I believe there is another case which occurred in Boston, within two years, which might be referred to, in which a United States judge required, in impanelling a jury, that they should declare that they would take the law from the court. But it appears to me, that this is a very great encroachment upon the rights of jurors. It is a matter of the highest importance, that their rights should be well guarded, and, I think it would be very proper at this time to interpose some obstacle against the encroachment of the courts upon their rights.

Mr. HILLARD. Mr. President: This is an important question, as has been said by my friend for Northborough, (Mr. Burlingame,) and I have only fifteen minutes to discuss it in. I wish our friends, the reporters, would invent a system of short-hand talking as well as short-hand writing. I wish we could apply to our debates some condensing process like that by which chemistry presents an acre of poppies in the shape of an ounce or two of opium. It is hardly possible to do more than cross the threshold of this subject in the limited time we have.

The question under discussion assumes two aspects. In the first place, what is the law,—in the second place, what ought it to be? As to the first point, every lawyer in the Convention will tell you that in criminal issues juries are judges of the law as well as of the facts. This is one of the common-places of our science. But what do these words mean? Here is the rub. One-half of the questions which have convulsed the world have been questions of definition. I am reminded, in this connection, of a well-known Jacobite epigram:—

> "God bless the King! God bless the faith's defender!
> God bless, no harm in blessing, the Pretender!
> Who that Pretender is, and who that King,
> God bless us all! is quite another thing."

In the interpretation of these words, two views or theories will be found to be sanctioned by the opinions of courts and judicial dicta. One is, that the jury has and ought to have the right to determine or settle the law, and in doing so to disregard the instructions of the court if they see fit; in other words, to assume what are strictly judicial functions. The other is, that while the jury, inasmuch as they give a general verdict of guilty or not guilty, have the power, or rather (to use a pedantic word) the potentiality—for power has a double meaning—to disregard the instructions of the court, and settle the law for themselves, they have no moral right to do so; that such a course is a departure from their proper line of duty, and that they are bound to receive the expositions of law laid down by the court, as authoritative and binding, and apply them to the facts as proved. This latter doctrine I take to be the received law in this Commonwealth, as laid down by the supreme court of Massachusetts in Commonwealth *vs.* Porter, (10 Metcalf, 263) and also in the circuit court of the United States by Mr. Justice Story and Mr. Justice Curtis.

In every criminal trial, the issue of guilty or not guilty, involves matter of law as well as questions of fact. In the first place, were certain acts committed; in the next place, do those acts come within the legal definition of the crime alleged in the indictment. This is true in all criminal issues; but there are also many civil issues which involve matter of law and matter of fact also. Two men, for instance, quarrel in the street. One gives the other the lie; and he is knocked down for it. He brings a civil suit for damages; the issue is not guilty; and the only defence is a legal defence founded on the provoking language. The judge charges the jury that words of provocation are no justification of an assault, but may go in mitigation of damages. If the jury disregard these directions and bring in a verdict of not guilty, the verdict may be set aside and a new trial granted. On the other hand, if the party assaulted goes before the grand jury, and they find a bill, his opponent is indicted for the same offence, the issue is the same, the defence is the same, the charge of the judge is the same, and yet

it is contended that the jury have the right to disregard the instructions of the court, and acquit the defendant, as fully as they have the actual physical power, and there is no remedy anywhere. I put it to any lawyer, to any man of candid, common sense, if between these two cases there is any distinction in law, reason, or natural justice. Can any man tell me why the jury, in the one case, should have a power which they ought not to have in the other?

The sensitiveness felt by many politicians, upon what are called the rights of juries in criminal trials, is, I think, the result of a false analogy—always a fruitful source of error. The doctrines on this subject, grew up in England, in times of tyranny, when the government was an oppressor; when men were hunted to death under the forms of law, by venal advocates and unprincipled judges. They grew up, also, not in ordinary trials, but in state prosecutions. The jury-box was then the Thermopylæ of liberty; and I honor, in the core of my heart, that noble army of martyrs and partriots, who, in that narrow strait, fought the good fight of constitutional freedom. But, applied to us, the analogy fails. In a criminal trial here, it is not an arbitrary government crushing one of its subjects, but it is organized society protecting itself against crime; it is the majority enforcing legally its legal will. And yet we claim for the felon, who makes war upon society, some portion of that sympathy which belongs to the patriot who resists tyranny.

Out of a multitude of considerations which crowd into the mind, I can only present one or two. Under all popular governments like ours, a written Constitution is a matter of necessity. The object of a Constitution is to protect the minority against the majority, as it is the object of a court of justice—in criminal matters—to protect the individual against the majority. This gives rise to an important branch of law called constitutional law. In England, they know nothing of this. Parliament is supreme, and when a statute is passed, there is an end of the matter. But here there are many enactments which come under the head of constitutional or not constitutional. In regard to these, as a man thinks, so is it. So close and subtle is the connection between the will and the mind, that where there is any room for question, every man conscientiously believes a law to be unconstitutional which he dislikes. I presume there is no man in this Convention, opposed to the fugitive slave law, who does not believe it to be unconstitutional. I presume there is no man opposed to the Maine liquor law, so called, who does not believe it to be unconstitutional. What will be the practical effect of giving the jury the right of acquitting every person tried under a law which they may deem unconstitutional? A law is passed by a large majority; it is sustained by public sentiment; the court charges that it is constitutional, and yet, if one juryman thinks otherwise, no conviction can ever be had under it. I ask the democratic gentlemen in this Convention, if this be not an anti-democratic principle? if it does not give, to one man in twelve, that is, to one-twelfth of the community, the power of nullifying the decision of the majority lawfully expressed. And, by the proposition before us, we invest an unlawful, unwarrantable usurpation of power with the character and privileges of a lawful right. And, especially, do I put it to the friends of temperance on this floor, that if they give their hands to this measure, they must, forever, forever, resign all thoughts of combatting this mountainous mischief of intemperance by legislative weapons. They may rear law upon law, they may cover the statute book with their enactments, but it will all be in vain. They will all be but waste paper. Their penalties and sanctions will be but wooden guns that will not go off, and painted dragons that will terrify none but babes.

I am farther opposed to this resolution, because its tendency is to strengthen what does not need to be strengthened, and to weaken what ought to be confirmed. It elevates the jury and depresses the court. My friend for Northborough, (Mr. Burlingame,) says, that in England the judges have been encroaching upon the province of the juries. Is that true of this country? Are we likely to suffer from the encroaching and aggressive spirit of the bench? I submit that the danger with us is rather the other way. The danger rather, is, that the currents of popular feeling, when strongly moved, will sweep away the bench, like bubbles on a swollen flood. In medical books, we read of cases of hypochondria. I have read of a man who thought his legs were made of butter, and would not come near the fire lest they should melt. There is also such a disease as political hypochondria. The minds of politicians are often haunted with unreal and fantastic fears. And I know of no more marked case of this disease than an apprehension of the usurpations and encroachments of the judiciary—that the rights of the people are likely to be immolated upon that altar. What has been, what is the course of public sentiment on this point? Are not judges less respected than they once were? Are not magistrates less honored? Is not the spirit of reverence growing more and more faint in the general heart? All the old men in the Convention will confirm these statements. It is the

power of popular sentiment, manifesting itself through juries and legislatures, which is gathering everything into its irresistible current. The very debates of this Convention show the weakness of the judiciary. Let me here state a political truism. The very fact that so many of our vigilant patriots are so sensitive as to the encroachments of the judiciary, is a security against those encroachments. Dangers that are foreseen are not dangers. Forewarned is forearmed. The real perils in States are those which are not apprehended. Should anything like a conflict ever occur between the judiciary and the legislature, or between the court and the jury, we should learn where was the strength and where was the weakness. The active sympathies, the fervid passions, the strong instincts, would rally round the popular institutions, while the bench would have the languid support of reason and judgment. The old, the timid, the conservative, the fossil remains of an antediluvian age of politics, would gather round the judiciary, while on the other side would be found the young, the ardent, the ambitious, and the aspiring; and in the shock of conflict the judiciary and its friends would not stand a moment. And I object to this proposition, because it is travelling farther in a direction in which we have already moved quite far enough. So far as it has any practical effect, it will be to lower the judiciary. It will make the presiding judge in a criminal trial, little more than a respectable ceremony. We require him to instruct the jury, and yet we authorize the jury to disregard those instructions. We permit them to receive the directions of the court simply as a piece of testimony on the law, which they may believe or not, as they please. You will thus lessen the desirableness of a seat on the bench, in the eyes of all high-minded men, and that is a result which the community must deprecate.

Lastly—I object to the proposition because of the cruel and mischievous uncertainty it will introduce into the administration of criminal law. If juries may determine the law as well as the facts, there will be as many courts of final jurisdiction, as there are juries. There will be one law to-day, and another to-morrow; one law in Boston, another in Worcester, and another in Springfield. A man may be acquitted in Suffolk, and another convicted in Middlesex, on precisely the same facts. Where the law is thus uncertain and inconsistent, there can be no true liberty. The government becomes, what our Bill of Rights says it should not be—a government of men and not of laws.

Mr. President: The views I have advanced are not popular. They are not entertained by the majority of the whole country, and I do not suppose that they will commend themselves to the favor of the majority in this Convention. I expect to be voted down. But I have learned to submit to the will of the majority when lawfully and constitutionally expressed. I shall waste no time in repining or croaking, but make the best of what is left. Inasmuch as the jury may always return a general verdict, and as they cannot be interrogated upon the grounds on which they made up their verdict, the proposed measure will have very little practical effect. I oppose it on principle. It is going farther where we have gone far enough; it is throwing additional weight into a scale already too heavy. In all things, my trust is the moral sense, the enlightened public sentiment of the community. Where that is sound, it corrects defective institutions; where that is corrupt, good laws are of little value.

Mr. KEYES, for Abington. I have waited for others who are more competent than I am, to discuss this question. I do not propose to say anything as a lawyer, or as a judge, upon it; but I look at it as an individual sitting upon a jury, might look upon a question of law. I recollect what Judge Wilde once told me when I was sitting upon a jury. Speaking of common law, he said that a man of good common sense could tell what the common law was upon almost, if not quite, every subject; and I inferred from that that the only advantage which a judge had over a juror, if he was a man of ordinary capacity, was that the judge had more experience, and his information was more comprehensive, and included a greater number of facts and cases. That is all the difference; so that a man who is not educated in the law can tell very well what the law is, because he can tell what it ought to be. The common law is the science of reason and justice; and a man who can tell what justice is can tell what the common law is, in almost all cases, and therefore he is just as competent to decide the case as the judge. I was glad to hear the gentleman from Boston say that the probable state of things would be very much as it is now, even if this resolution should pass. I believe so too. It seems to me, treating this as we do other subjects, that there is reason enough for the adoption of this proposition, growing out of the present state of uncertainty which exists in regard to it. Every-body knows that juries do judge of the law as well as of the facts. They cannot help it; they will do it. In the city of Boston,—I was going to say that you could carry the fugitive slave law into execution, but I doubt it; I will not accuse the city of Boston of that; I believe

that, bad as they may be in some respects, they are not bad enough for that. But, Sir, I will say this, that in the city of Boston you can hardly carry the Maine law into execution. There are reasons for both of these facts. I should like to see the Maine law executed; but no man refuses to carry that law into execution who does not have some very plausible reasons for it. There are provisions in that act which we would not submit to in other cases; and the only justification of it is, that as liquor-selling is an extraordinary evil, it requires an unusual and extraordinary remedy. But when you find one juryman out of twelve, as the case has been within two or three days in Boston, standing out against it, it is not entirely without reason that he does so. A few years ago there was a gentleman who was editor of a paper in Boston, and it happened that he was on a jury, and it happened, also, that he was found in a minority of one, and he thought the other eleven were extremely unreasonable because they did not agree with him. Sir, according to the judgment of the public at the present day he was right, and the eleven opposed to him were wrong. The laugh and joke has passed around about the one who thought all the rest on the jury were unreasonable; but it is now generally believed they were unreasonable; there is no doubt about it; the minority was right. Now, Sir, the difficulty is not that the jury are liable to be influenced by the judges. They will take the judge's testimony just the same as they take the witness's testimony. They are to receive it as testimony, and they do receive it as testimony. Do men suppose they will not place any reliance upon it? Let Judge Shaw give instructions to the worst set of men in the Commonwealth who ever constituted a jury, and we know they would regard his testimony. If a law should happen to be passed which insults the common sense and the humanity of the people, they may so construe it that the people will not suffer. Now, Sir, the testimony has been well stated here. This subject was once before the Senate, and I took occasion to look at some books to find out the opinions of the bench upon it, and I found them to be, in a majority of cases, in accordance with the doctrines of the resolution before the Convention, viz.: that the jury had a right to decide the question of law, as well as the question of fact.

Now, Sir, there need be no apprehension one way or the other, unless great political questions are to be decided. When such questions are to be decided, then, of all times, it is the business for the jury to be felt. Take the great case in Pennsylvania, the Prigg case, for example; that was an agitated political question, but the judges did not decide it according to law; they did not pretend to decide it according to law. Then was a proper time for the jury to give their opinion of the law, as well as the judges. There is no danger from these political questions, because they do not often come in contact with the judiciary, and neither the judges nor the jury are often affected by political agitation. Therefore we find no difficulty. But the very existence of a doubt on this question is, in my opinion, enough to make it necessary that it should be settled one way or the other; because, if the judge in one place is to tell a jury they are bound to decide according to the law which the court lays down, and a judge in another place allows the jury free power to judge both of the law and the fact, there arises the difficulty to which the gentleman from Boston (Mr. Hillard) so justly deprecates. The only way to avoid that difficulty, is to have the matter decided here, one way or the other.

Now, the judges in Massachusetts have, for a few years past, taken the law into their own hands in a totally unjustifiable manner. They have questioned jurors before they took their seats. But jurors, when drawn, should be allowed to take their seats, unless they are challenged by the accused. If a judge is to tell a man who is drawn, that he is unfit to sit because he entertains certain opinions; or if a judge shall ask a juror who is drawn, if he believes in the constitutionality of this or that law, the juror ought to tell him it is none of his business. The moment you permit the judge to put this question and that question, and compel the juror to answer, the power and independence of the jury are destroyed. Why, Sir, under such arbitrary ruling, if the juror says he does believe the law to be constitutional, then he can sit; but if he says he does not believe it to be constitutional, then he is rejected.

Mr. HILLARD, of Boston. I wish to correct a statement of the gentleman for Abington; for I am sure he would not wish to leave a wrong impression. The question put in the case to which he alludes, was just this: Are your opinions upon the constitutionality of the fugitive slave law, such as to prevent your finding a verdict of guilty in any possible state of facts?

Mr. KEYES. No matter; it comes to the same thing. It is this. The facts in the case, most of them, may be perfectly notorious; the question is to be decided upon the juror's ideas of the law itself. If, therefore, his mind is made up against the accused, then he is allowed to sit; if it is made up the other way, then he is not allowed to sit. But, I say the judges have no business to know anything about it. The law

provides a way in which jurors are to be drawn, and they are to sit, unless they are challenged by the person accused, or have expressed such opinions as would show that they were unable to decide impartially, after all the forms of trial had been gone through with.

Mr. SUMNER, for Otis. I cannot subscribe, Mr. President, to the principle involved in the proposition under consideration, notwithstanding the very respectable authority which has brought it forward. Jurors are now unquestionably, judges of the law as well as of the fact. But it is a well settled principle, and I apprehend, one which is regarded throughout this Commonwealth, that they should be governed by the advice of the court, or the instructions of the court, in relation to the law, unless they *know* that those instructions are wrong. And in assuming to act contrary to the instructions of the court, they assume a very high responsibility.

This proposition before us seems to be founded —for it is not a novel one—upon a feeling of philanthropy toward the accused; and the question is, whether, after all, it is not a mistaken and a misdirected philanthropy, and whether the proposed rule may not be prejudicial rather than otherwise to him. Let us illustrate it. Suppose a person is put upon trial who is accused of crime. His reputation is perfectly well known in the vicinage, and is known to the jurors as being bad. Now the facts which happen to be adduced against him are weak; and the law, rightly applied to his case, would exonerate him from the charge against him. The law is correctly given to the jury by the court; but the jury, by reason of prejudices, of which, perhaps, they are not conscious, but growing out of the fact of their acquaintance with the reputation of the accused, make the law, in their hands to become elastic. They venture, notwithstanding the plain instructions of the court, to go contrary thereto, and the consequence is, that the accused is condemned, and condemned wrongfully. All this may be the effect which this supposed philanthropic rule which you are attempting to fix in the Constitution will produce. Other illustrative cases might easily be adduced, but they will so readily occur to the minds of gentlemen present, that I need not take time to state them. And what is the remedy against the verdict thus found by the jury? If the jury decide wrongfully, who can interpose to restore to the injured party his rights?

No, Sir; I think that upon principles of philanthropy in relation to the accused, as well as in regard to every other principle that can be brought into view, the rule stands better as it now exists, than it will by the incorporation into the Constitution of any such principle as the one proposed. As the law and the practice now is, if the court err in relation to the law which is given to the jury, then there is a complete remedy. Then an exception may be taken to the ruling of the court, and a farther hearing may be had upon the subject, and if an error has been committed, it can be corrected.

Again, Sir, what is the duty of the court in conducting criminal trials? The theory of the common law, in relation to the duty of the judge is not an unmeaning theory; namely, that he is to be of counsel for the accused. It is incumbent upon a judge to see to it, that a proper watchfulness is exercised in the conduct of every criminal case, that no improper evidence be introduced; that no erroneous rule is laid down for the government of the jury; in a word, he is, I repeat it, *to be of counsel for the accused.*

If the principle is to be adopted, that jurors are to be judges of the law, irrespective of instructions from the court, the same principle will, of course, find its way into the grand jury room. The regulation now is, that before every grand jury, they are to have the aid of a prosecuting officer, conversant with the law, who is to inform them of the rules of the law as applicable to the cases before them. But if jurors are to rule over the court, in the trial of causes, then why not suffer the same authority to be adopted in the grand jury room; why not specially authorize grand jurors to take upon themselves the responsibility of indicting persons according to their own notions of law, crude and imperfect as they may be? The result might easily be seen. Indictments without law, and against law, would be found.

Sir, in looking at the probable working of the change proposed, who cannot readily perceive the confusion and difficulties that will be apt to follow? May not, and will not, occurrences and examples like the following often be witnessed? For instance, here are two cases precisely alike, depending, it may be, upon the same facts and the same principles; you bring one before the jury upon the right of the judge; they hear the case, they hear the evidence, and they render a verdict of acquittal, upon their law. Another case comes before a jury on the left of the judge; the same evidence is given, and the same law is applicable, and that jury, with the same power to judge of the law, find a verdict precisely contrary to that which was rendered in the other case. What a system of things for the administration of justice that would be!

No, Sir, I think we had better let the principles which now obtain in Massachusetts, remain as they are, without seeking such an improve-

ment—if so it may be called—as is here proposed.

Mr. LADD, of Cambridge. I desire to say a few words upon this question, before it shall be finally passed upon by the Convention. Although I find upon the Committee who reported the resolution, the names of gentlemen of such character and judicial reputation, as will almost induce us to adopt, upon their authority, and without careful investigation, a proposition of this kind, emanating from such a source, yet I do protest against the enunciation, in our organic law, of such a principle as is contained in this resolution. There are considerations, entirely conclusive to my own mind, and which, it seems to me, should control the action of the Convention in this matter.

The great principle of the American system of government consists in the division and distribution of power among several coördinate departments—the legislative, executive, and judicial—not as government existed with our ancestors in a former age, and another country,—when the people were not governed by written laws and constitutions, and the powers of the legislature were defined and limited by no constitutional provisions. Now, by the Constitution, the power and duty of administering, interpreting, and judging of the law, devolved upon the judiciary. That is the department of your government which should decide upon law. Now, the resolution proposes that in all criminal trials, the jury shall have the right to decide, not only the fact, but the law.

We have in the Bill of Rights, art. 10, the following provision: "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." And by the 29th article of the Bill of Rights, it is provided as follows: "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."

Now, I think it very important, either as a practical or a theoretical question, whether you shall put this amendment into the Constitution. As the law now exists, as I understand from the decisions of our supreme court, the jury in criminal cases may, if they think it expedient, return a special verdict; that is, the jury may judge and determine as to the fact, and submit the same to the court to apply the law. And that is a special verdict. The jury have also the right of applying the law as propounded by the court, and of returning a general verdict; and thus they have the power—if they choose to assume a power which they cannot rightfully exercise—they have the power to revise and control the decision of the court. But the supreme court has held that jurors are bound by their duties to society, by their social and moral obligations, and the sanction of their oaths, to receive the law from the court, and to adopt its interpretation and construction for their guidance.

Now, I would inquire, whether in our American system, or in our own Constitution, there is any meaning or intention that any such condition of things should exist, as that, in the ultimate decision of questions of law—the highest exercise of the judicial authority—the jury should have the right to judge, in order that, in the words of the Bill of Rights, "each individual may be protected in the enjoyment of his life, liberty, and property, according to standing laws," and "that there be an impartial interpretation of the laws, and administration of justice"?

I inquire, then, what will be the result, if you introduce this principle into the Constitution, and if juries should exercise, as they then rightfully may, the power thus conferred? You would have juries who would not hesitate to carry out the principle, and to claim the right to decide upon the law. With a rightful authority to construe, interpret, and judge of the law, by how short a step may juries advance to the inquiry, whether the law, which they are called upon to decide, is a proper law, or not? If they are made the judges of the law, how great a stretch of authority would it be for them to assume to decide upon the constitutionality of the law? Now, Mr. President, it seems to me that it is one of the great duties of the government, to protect persons who may be accused of crime, as well as to protect the community against crime. It is the right of every citizen to be governed by "standing laws," the interpretation of which shall be uniform, and not subject to change. Ingraft this principle upon the fundamental law; give to juries this right of ultimate judgment in criminal causes; and you establish in every county of the Commonwealth a distinct tribunal, which is to pass upon the most sacred rights of the citizen, but whose decisions are governed by no uniform rule—by no standing law—and from which there can be no exception or appeal.

What security for a fair and impartial trial, according to standing laws, would remain to the accused, in some circumstances in which he might be placed in relation to society, or in periods of public excitement? Establish this principle, and if juries act upon it, the great safeguards of the accused are removed. He is no longer protected by standing laws.

It seems to me, therefore, that in every point of view in which I can survey the question, the proposed innovation involves a dangerous principle; that it is contrary to the general spirit of our institutions; that it contravenes the provisions of our Bill of Rights, and will practically introduce uncertainty and confusion into the administration of the law.

Mr. HALLETT, for Wilbraham. This question, involving the great right of juries in criminal trials, was much considered and discussed in the Committee on the Bill of Rights, and the proposition now under debate, was reported to the Convention, not by a majority, but by an equal division of the Committee.

It is a very vital question, as I regard it, and one in which I have, professionally and personally, taken a deep interest for a great many years. I trust, therefore, that having been instructed by one half of the Committee to submit this proposition, I shall not be considered as intruding upon the Convention, in offering some reasons for its adoption, as a necessary reaffirmation of a lost right in the Constitution. It is obvious, that under the rule limiting a speaker, I have no time to argue; I can but make suggestions, though I may enlarge in revising these remarks, by adding what I am now obliged to pass over.

Sir, I claim no new right for juries, but the restoration of a very ancient right, which the courts recently, and against common law, have denied to them. A new sophistry has sprung up by which acute lawyers and judges, while admitting the *power* of the jury to pass upon the law and the fact, proceed to argue away the *right*, and by thus alarming or confounding jurors, take from them the power as well as the right to do otherwise than to find a verdict as the judge may direct; so that in all criminal trials, where the law is in doubt, it is the verdict of the judge and not the verdict of the jury alone, which convicts.

Now I hold that this is not the ancient "trial by jury"; the "*judgment* of his peers," which is secured to every subject by the Bill of Rights; and therefore if we would not yield up this old common law right to a new judicial construction by which the courts evade it, it must now or never be reaffirmed by the people, as a part of their organic law.

Hence the proposition I have had the honor to submit, is simply the reaffirmation of a denied right; the enunciation of a great principle, endangered by judicial construction—the reorganization, in fact, of the ancient charter of jury rights. That is what it is; and with it is involved the right of every person when charged with crime, to have the *whole verdict* of a jury, guilty or not guilty, law and fact all included. And therefore in considering a proposition, which lies at the foundation of all personal rights in government, I look at it only as a broad fundamental principle. I can see no personal or particular application, that I desire to make of it; no law that is to be enforced by the judges, depriving juries of their rights, or to be abrogated by the juries exercising that right. Give me the principle, and sure I am that it will secure the rightful administration of justice, by a rule of trial as old as the common law, and under which all criminal causes have been conducted, consistent with good government, for two hundred years in this Commonwealth.

It was necessary in the olden time, repeatedly to reaffirm *Magna Charta*, which was first forced from King John, was subsequently violated by his successors, and again reënacted by the people, until it was made treason in the king to attempt its infringement. So in modern times, the judicial power, under the irresponsible life tenure of office, has gradually usurped the ancient right of juries in criminal trials, by construing it to mean a naked and lawless power, without any right to exercise it. And now the time has come when the people of Massachusetts will have the opportunity to demand, in the reënactment of their Constitution, that this power and this right, which always meant one and the same thing in the organization and practice of trial by jury, shall be restored with its original interpretation and intent.

That is the question here to-day. It is no innovation, but it is a restoration. We ask for no new law, for no new principle. We ask only, that this judge-made law, which is no part of the Constitution, no part of the old common law, no part of statute law, and no part of the precedents or practice of our courts until very recently, shall be set aside in Massachusetts, and the original construction and practice in trials by jury, be proclaimed anew as the supreme law of the land.

I have said that the recent denial of this right by the courts, was an usurpation. I use that term in no offensive sense, but as indicating the gradual encroachments of the bench, which is always inclined to amplify its jurisdiction. It has gone on here precisely as it has gone on in England, whenever it became the wish or the policy of the courts to treat the jury as an obstacle in the way of enforcing convictions.

The denial of the jury right began in England with the usurpations of the judges over the liberty of the press in trials for libel. It was never applied to other criminal trials as a rule of law. With a thorough examination of English prece-

dents, I undertake to affirm, that until after American Independence, which freed us from all British criminal practice, unless previously adopted by our courts, no authority of any court of common law in England can be found, against the right of the jury to find the law and the fact of the case by a general verdict in all criminal trials, except in the judicial murder of Algernon Sydney in 1683, by Chief Justice Jeffreys, who said to the jury "the point in law, you are to take from the court, gentlemen."—(3d State Trials, 805.) And this never was law, even in England, for Parliament set aside the verdict and attainder against Sydney, solely on the ground of the misdirection of the court to the jury.

The denial of this right, in fact, had its origin in the infamous Star Chamber, and a modern English law writer of high authority, Mr. Starkie, says: "After the abolition of the Star Chamber, which in cases of libel exercised an unbounded control over both law and fact, the cognizance of such offences reverted to the court of King's Bench, to be exercised in the constitutional mode by the intervention of a jury; and till sometime after this period, no doubt seems to have been entertained of the *right* of a jury, (he uses the term *right* and not power,) to give a general verdict in the case of libel, *as well as in any other criminal proceeding.*" And he then proceeds to give a history of Lord Mansfield's usurpation over juries in denying to them the right to determine the law and the fact in trials for libels.—(Starkie on Slander, 617.)

The whole course of the common law was thus perverted by this comparatively modern devise, of power without right, which was invented in order to destroy the free press of England, by that learned, but most arbitrary of all the judges who ever sat on the king's bench.

I am surprised that American lawyers or judges should ever cite that authority against juries, because the first formal decision by Lord Mansfield that the jury were bound to take the law from the court (in the Dean of St. Asaph, disclaimed too, at the time, by his associate on the bench, Mr. Justice Willis, who said that "the jury had the *right* as well as the power to judge of the question whether libel or no libel") was given in 1784, long after our independence, and therefore never was common law or any other law in this country. And in England that judge-law was repudiated by an act of Parliament in 1792, as a judicial usurpation over the rights of juries to determine the law and the fact by a general verdict in indictments for libel *as in all other criminal causes.*

Recently, some British judges have attempted to revive this exploded doctrine of Lord Mansfield, and the ancient right of juries is now in danger in England, as it is in this country, by the mere force of judicial construction.—(Baron Parke in 6 M. and W., and Best, chief justice, in 4 Bing., 195.)

The progress of judicial usurpation over juries has been similar in this country, first in the circuit court of the United States for Massachusetts, and very recently in two or three State courts. The lawyers and judges of the old school of common law always affirmed, and never questioned the right. In 1804, the supreme court of the United States, through Chief Justice Jay, declared the opinion that "the jury have the *right* to take upon themselves to judge of both law and fact, and *to determine the law as well as the fact in controversy.*"—(3 Dallas, 4.) And yet a very learned judge of the circuit court—Mr. Justice Story—assumed to set aside that law and all American common law on that point, by resorting to this subtle definition of power without right, which has since been adopted by other judges in that court, and by judges of our State courts in Massachusetts, until the power and the right will both be taken from the people by judicial construction, unless they now affirm it emphatically, as a part of their fundamental law.

In Massachusetts, the very recent change in judicial construction against jury rights, is remarkable. From the earliest period of the judicial history of this Commonwealth, down to the recent decision in the tenth of Metcalf's Reports, (Commonwealth *vs.* Porter,) no question was ever made by the supreme court, or any of its judges, of the right of the jury to determine the whole law and the whole fact involved in their verdict of guilty or not guilty. Chief Justices Parsons, Parker, and Shaw, and Justices Putnam, Wilde and Morton, and others, have announced this as a settled principle of common law, over and over again. I have at hand references to numerous cases in our reports directly to this point. It was the common judicial acceptation in charges and in arguments to juries in all criminal trials, and if there be any common law settled by precedents, that was settled, until it was disturbed, though not even then expressly denied, by the decision in the case in Metcalf. I will cite two authorities that cover the whole ground. In the tenth volume of Pickering, 496, Commonwealth *vs.* Knapp, the supreme court deliberately say: "As the jury have the *right*, and if required by the prisoner, are bound to return a general verdict of guilty or not guilty, *they must necessarily decide such questions of law as well as of fact, as are involved in this general question*, and there is no mode in

which their *opinions* upon questions of law can be revised by this court or by any other tribunal."

That was the solemn decision of the whole court in 1830. And again in 1838, in the 20th of Pickering, 222, the case of Commonwealth *vs.* Kneeland, the learned Chief Justice Shaw, in giving the opinion of the court, said: "In all criminal cases the jury are to pass upon the whole matter of law and fact, and to render a verdict of guilty or not guilty *upon the whole matter, including all questions of law and of fact.*"

And that is just what the proposition now under consideration is intended to affirm as the meaning of "trial by jury" in Massachusetts. It says, in very plain terms, that the jury, having the power, as is admitted on all hands, "shall have the *right*, in their verdict of guilty or not guilty, in all trials for criminal offences, to determine the law and the facts *of the case*." Not to violate law, not to make law or to establish precedents of law for other cases, but to say guilty or not guilty upon *the law of the case* which makes the act a crime, as well as upon the act itself, which is alleged to be a crime. So that there is no pretence for the objection raised by those who disparage juries, that this makes the jury judges to decide points of law or settle the law in one case for other cases, or that they will make the law uncertain by different verdicts—because each case stands by itself, and the jury decide nothing but the particular case committed to them, including therein the whole issue of law and fact.

Hence, this proposition, if put into the Constitution, will only restore the right which the courts of Massachusetts always admitted to its full extent, until the case in the tenth of Metcalf, which has left the power and taken away the right. And how did that happen? In 1845 a case was tried before the court of common pleas, in which the judge denied to the counsel the right to argue the law of the case to the jury at all. It was the first time, in the existence of common law courts, that such a right had been denied to counsel, and yet it was but the final step in this judicial assumption of taking the law of the case out of the hands of the jury. It in effect, set aside the trial by jury, and when that judge required of me, as counsel in that case, to argue the points of law to him, that he might order the jury how to find on the law, and then to argue the facts only, to the jury, I said: "I will not argue the law to the court, and the facts to the jury separately; I will argue the whole defence of mixed law and fact to the jury, or not at all. The Constitution secures to every subject, 'when held to answer for any offence, the right to be *fully* heard in his defence, by his counsel.' If the court sees fit to stop the defendant in his full defence, I will sit down, but I will not yield the right to argue the full defence of law and fact to the jury." The judge persisted. Exceptions were taken to his ruling, and when the question was argued before the supreme court, the learned judges, after holding the case over for more than a year, turned their backs upon themselves, and, in effect, set aside all the precedents and practice of the Commonwealth. I must be excused for saying that it was the worst reasoned judicial opinion that can be found in the Massachusetts Reports. It did not take the only consistent ground against law which the common pleas judge took; viz.: that the counsel should not argue the law to the jury, because they had nothing to do with it. They overruled that as utterly against all law and all practice; but after affirming that the counsel had a right to argue the law to the jury, they then went on to say that the jury had no right to listen to, or be convinced by the argument, but must implicitly take the opinion of the judge. And this was the first time that the doctrine was ever broached by the supreme court of Massachusetts, that the jury had the *power* but had no *right* to determine the law and the fact of a criminal case.

Now, where could there be a more extreme judicial paradox than this, no matter from what quarter it should come? Admitting that the counsel had a right to argue the law to the jury, and then denying that the jury had any right to say whether the argument was true or false! Why then argue it at all? The right of counsel to argue, but upon the express condition that you are not allowed to convince! A great right, truly! That, Sir, is conclusive that the decision of the judges in the case in the tenth of Metcalf, was wrong, wholly wrong upon that point; and no learning or logic can sustain its consistency. True, the supreme court overruled the case as it came up to them, and sent it back for a new trial, so that the defendant prevailed. But, it was decided upon a new and self-contradictory principle, that juries have the *power* to embrace in their verdict, and determine the whole issue of law and fact, but that they have no *right* to use that power, and they would be guilty of presumptuous wickedness if they dared to exercise it! Just as if you cannot trust juries as well as judges, with the exercise of every power which the Constitution and the law gives them; for neither judge nor jury can have a lawful power to do anything which they would not have a lawful *right* to do.

On the contrary, instead of the judge being the safest depository of criminal law, all judicial

history shows that, whenever the life or liberty of the people is concerned, it is the judges, and not the juries, that are most to be feared in disregarding law, and enforcing injustice. The books are full of cases involving great questions of liberty and law, in which the judges have been wrong, and the juries right; and there is not a case on record, where a jury has convicted the innocent by disregarding the law laid down by the court, and never will be. I have no time to cite cases, but just go back to the trials for witchcraft, in Massachusetts, in 1696. Hutchinson tells us that the juries changed long before the judges did. And so it was; by disregarding the directions of the judges as to the law, and taking the law as well as the fact into their own "judgment," they averted that terrible judge-law persecution. And where did that monstrous judicial error spring from? Why, Sir, aside from all the province laws, it came from the English common law of crime, made by the otherwise learned and upright judge, Sir Matthew Hale, who caused the hanging of poor Rose Cullender, by inducing a jury to take his law which he laid down to them, that witchcraft was a crime punishable with death. That same judge-law was introduced into the then supreme court of Massachusetts, as the common law of England, and Chief Justice Stoughton, and his associates on the bench, undertook to enforce it, until they hung nineteen women, and had some seventy accused arraigned for trial, when a jury of Middlesex resolved to give a *whole* verdict upon the law as well as the fact, and acquitted the victims, against the instructions of the court, and determined to convict no more. And thereupon old Judge Stoughton rose on the bench, and exclaimed: "We were in a fair way to have rid the land of these emissaries of the devil, but now, the Lord have mercy upon us!" And he left the bench, and would sit no more in that court.

Now, Sir, I defy any lawyer to cite a case in which the jury, where the judges sought a conviction, have undertaken to determine the law and the fact of the case, and have not decided rightly, in favor of life and liberty.

A word, only, touching some technical objections raised here. One gentleman says, there can be no exceptions taken as to the law, if the jury are to determine the law as well as the facts. Cannot except? What do you except to? To the verdict of the jury, when they acquit? Never. That is final, and no judge or court can call it in question. And how do you know, or what right has the court to know, whether the jury render their verdict on law or fact, or both? That belongs to them, and never to the court. If the jury convict, the law, in that case, has always allowed the prisoner to except either to the instruction of the court, or to the verdict of guilty, if against law or against evidence. That is the security given to the subject in favor of life and liberty, and who will dare to take it away? And that is left by this proposition as it now stands. It declares that "the jury, after having received the instruction of the court, shall have the *right*, in their verdict of guilty or not guilty, to determine the law and the facts of the case." That is, they are to take the whole matter in issue, law and fact together, and have the right to determine the *criminal guilt*, which is the law, and the *actual guilt*, which is the fact. But the supreme court now undertake to say, as Judge Jeffreys said, in the trial of Sydney, "The point in law you are to take from us. We will find a verdict upon the law, and you may find a verdict upon the facts." And thus the judge makes himself the jury, and finds one-half of the verdict, and the jury the other half, and so between them they convict; and that, I maintain, is against common law, because it is not the "trial by jury," "the *judgment* of his peers," to which every man charged with crime is entitled of right.

It is the province of the judge to instruct the jury, not to control them, against their "*judgment*," which means their honest opinion, under their oaths, and not the opinion of the judge forced upon them. It will happen, only in extreme cases, where a jury will not be able, conscientiously, to conform their "judgment" to the instructions of the court, and therefore it may be safely left to their discretion. In fact, it is the only safeguard against arbitrary and unjust judges. If the instructions of the judge are wrong, or if the verdict of guilty is wrong, you go to the court for a new trial, and therefore this proposition—affirming the jury right—in nowise can be construed to interfere with the right of exception, or of a new trial. If professional gentlemen have any belief—which I have not—that the court would evasively deny exceptions, let it be made their duty to allow exceptions, and grant new trials, as heretofore.

Especially is it unfair for professional gentlemen to confound the broad distinction that exists between civil and criminal trials, in this respect. In civil causes, either party, at the discretion of the court, may have a new trial, for law or fact; but in criminal trials, this right appertains to the defendant only when convicted. Why is this? The reason covers the whole ground of the argument. It is because the trial by jury, in criminal charges, has always been regarded as the palladium of liberty, and there is no safety in trusting

the life and liberties of the people in the hands of judges; and therefore, neither parliament in England, nor any legislature in America, ever enacted a law to allow a judge to grant a new trial against a party who has been acquitted of crime, by a verdict of jury.

On the other hand, in civil causes between parties, there has always been, by common law, and with us by express statute, a discretion given to the court to set aside a verdict and grant a new trial to either party, either for law or for fact. And this makes a manifest distinction. It takes from the jury both the power and the right to determine the law in civil causes, and gives it to the court, who may control the jury by setting aside their verdict, whenever the judge does not agree to it, and granting a new trial. Consequently, by refusing to give any such power to the court, in all cases of a verdict of not guilty, in criminal trials, the law decides and declares that it is the jury, and not the court, who are to pass upon and determine, by their verdict, the whole matter of law and fact in the case, and the court has no power or right to interfere with the power and the right of the jury to acquit.

Now, Sir, we have got involved in subtle definitions and technical contradictions by this new judicial theory of power without right, and I desire, as it seems to me all should desire, to have this matter authoritatively settled by the people, in their new Constitution, so that we may no longer have these contentions between judges, lawyers, and juries, but may return to the old safe practice of leaving the whole case, law and fact, to the "*judgment*" of the "peers," the jurors.

Manifestly a necessity has arisen for this declaration. Junius well said of Lord Mansfield, who began this work of destroying the trial by jury: "Let the case be what it may, your understanding is always on the rack to contract the power of the jury, or to mislead their judgment." And as Lord Mansfield did in his day, so some modern judges have done and are now doing in their day; and this is a reason why the judiciary has fallen somewhat in its old repute; not because it has not enforced law, but because it has too much attempted to enforce juries and contract their rights. And this has caused criticisms and comments of the profession and the press, in which the judiciary has had the arbitrary side of the argument. While I concede all that may be asked to the learning and ability of Massachusetts judges, I feel bound to say, nevertheless, that this tendency of the bench to contract the power of juries and control their verdicts, has been carried farther in this Commonwealth than in any other State in the Union. In Maine, in Vermont, and other States, this great right of juries has been again and again judicially affirmed, and it is made a part of the Constitutions of several of the States, and the criminal law is as wisely administered there as here, for the public security. So in all that time, in which the right was never denied in Massachusetts, until Judge Story began it, sixteen years ago, who will deny that law was as safely enforced in this Commonwealth as it has been since?

Now, let us put this question directly to the people, for them to settle. If it is their will that the judges shall control the verdicts of juries in criminal trials, precisely as the law authorizes them to do in civil cases, so that the jury are to find the fact, separate from the crime, and the court apply the law to it, as in a special verdict, then let it be so proclaimed; and that will strike out of the Bill of Rights the "trial by jury" and the "judgment of the peers." But if they mean to preserve the ancient right of juries as the palladium of personal liberty, they will put this provision into the Constitution, and it will there remain, an undisputed and perpetual right.

Mr. DANA, for Manchester. I will take a moment out of my very short time, to ask the gentleman for Wilbraham whether he means that juries shall be exclusive judges of the law of evidence, and of the reception or rejection of the testimony of a witness?

Mr. HALLETT. No such theory is embraced in or can be construed out of that provision. It is only in regard to receiving instructions.

Mr. DANA. Suppose that certain evidence is given in, and the court tells the jury that that evidence is not admissible; are the jury then to receive it or to throw it out, each man as he chooses?

Mr. HALLETT. The answer to that is simply this: The jury is sworn to determine between the prisoner at the bar and the Commonwealth, according to the evidence. That evidence is what goes to them under the supervision of the court. That evidence that is not given to them, or that is withdrawn, they have nothing to do with.

Mr. DANA. Then the gentleman admits that the jury are bound by the decision of the court upon the law of evidence. But this is not clear from the resolve. The resolve says: "In all trials for criminal offences, the jury, after having received the instructions of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case." So that it is no matter what the instructions of the court may be, the jury are not bound to follow them. If the court say to the jury that a certain piece of evidence is not to be received, still

the jury have, by this provision, a right to receive it or not, as they may see fit, and each juror as he sees fit. But I understand the gentleman for Wilbraham to say that this is not so. He should provide, in his resolution, that it should not apply to the case of evidence.

Then, Sir, there is another consideration, and that is, whether the rights of parties in criminal cases do not depend nearly as much upon the law of evidence as upon any other law; and if he provides that they shall not be judges of the law of evidence, but shall take the law, in that case, from the court, then he has surrendered one-half of his case, and all the principle of his case. The law fixes the rules of evidence that shall acquit or convict a man. I offer a piece of evidence tending to acquit a man charged with crime. The judge says that such evidence is not admissible. If the jury think that, if received, it would clear the prisoner, and that it ought to be received, and yet reject it, does not the jury convict the man against its view of the true legal case?

Mr. HALLETT. We merely propose to restore the original rights of the jury. If the gentleman for Manchester desires to embrace the question of evidence he can do so.

Mr. DANA. Then I understand the gentleman to say that he does not include the law in regard to evidence. Let me carry out the illustration I had commenced. Here is a piece of evidence tending to acquit a prisoner. The court says that it cannot be received. The jury say that it can; yet the jury is not to judge, but are tied, hand and foot, by the court. Now, am I not right in saying that the gentleman has surrendered his principle on a very material point? And the fact that he has surrendered it there, shows me—and I hope it will show every gentleman in the Convention, who will consider this matter candidly and without passion—that this principle cannot be carried out.

It is now the rule that juries pass upon the law in rendering general verdicts, as well as upon the facts. It always has been so; and when judges take from juries this right, they have usurped a power which does not belong to them. It has not been done in this Commonwealth. Lord Mansfield attempted to encroach upon the right of the juries, by telling them whether a certain publication was a libel or not. But an act of parliament—drawn in the first place by Burke, and afterwards altered and carried through by Fox—provided that the question, whether the particular publication was a libel or not, including the intent, should be decided by the jury and not by the court. This is now the law here, and it is the law everywhere. But this does not make the jury judges of the law. It only transfers one subject from the department of law to the department of fact—from the court to the jury, still leaving each its department.

This proposition introduced by the gentleman for Wilbraham, (Mr. Hallett,) is one of two things. It either has no significance at all, and leaves the law as it now is; or else it introduces a new and dangerous principle. It is one or the other. It does seem to me that the gentleman for Wilbraham is a little disposed—unintentionally, of course—to make this Convention a court of errors, to rectify the decisions of courts given in cases which he has lost. [Laughter.] First is the case of Abner Kneeland. That must be set right by amending the third article of the Bill of Rights. Then the Porter case. That requires an amendment of another article. To soothe his mind on the Rhode Island cases, we must have a new declaration of the right of self-government, and an abrogation of the right of the legislature to proclaim martial law. He takes these cases too much to heart. He would make this Convention hinge on the Dorr controversy, and Abner Kneeland and Zachary Porter.

Mr. HALLETT, (interrupting). The gentleman has probably in his mind his *habeas corpus* in the Sims case.

Mr. DANA. I think these cases have made a lodgement in the mind of that gentleman, and he cannot be easy until he makes the action of this Convention turn upon them. On the subject of amendments to the Constitution, it must turn on the Rhode Island case. On the subject of law martial, it must turn on the Rhode Island case. On the subject of the jury's judging of the law, it must turn on the Kneeland and Porter cases.

Consider, for one moment, if this proposition is adopted, and the jury are to judge of the law, what the consequences will be. I must throw myself upon the candor of the Convention, at this time, as I know they are not disposed to hear speeches at this late day, and the popular feeling is in favor of juries.

There is one great fact taught by all history: that is, that liberty is best secured by a division of power. We have divided our government into three great departments: the executive, the legislative, and the judicial. Why? Because liberty is best secured by a division of power. Why do we have judges and juries? Because liberty is best secured by a division of power. Whatever gentlemen may think of a particular case or law, of the fugitive slave law, of the liquor law, or of the libel law, when you take all together, the whole history of the past, liberty is best preserved by a division of power. Give

your judges the responsibility for the law, and give to your juries the responsibility for the facts, with the right of applying them and declaring the result. But, if you make your judges judges of law and fact both, however good your judges may be, your liberties cannot long be safe. You may give me a court of seven of the best men in Christendom, and I would not allow them to judge of the law and fact in criminal cases. Give me twelve of the best men in Christendom for a jury, and, in the long run, I would not allow them to be judges of both law and fact, in the sense of the gentleman for Wilbraham, that is, that they should be the final and conclusive judges.

Let gentlemen look at the result. We wish to have laws uniform and well settled, if we have laws at all. The interpretation of laws must be as much settled, as the writing of the law. We pass a statute, and the interpretation of it is a great point. How can we ever have a settled interpretation, if the jury are to be the judges? The juries never give a reason for their verdicts. They go out and consider their verdict, and come in and say "not guilty;" but whether they come to their conclusion for want of evidence, or because they thought the law applicable to the case unconstitutional, or because they understood the law in a peculiar way, or rejected or accepted certain evidence, never can be known. Two men may be engaged in the commission of the same offence. They may separate in their trials, and one goes to the first jury, and he is acquitted, and the other goes before the second jury, and he is convicted. They are tried on the same evidence, and by the same judge. You can never know why one was taken and the other left. It may be that the jury thought certain evidence admissible in the one case, which was not received in the other. One jury may have thought the law constitutional, and the other not. There is no record to show their reasons, and it can never be known, until the sea gives up its dead, why the one was acquitted and the other hanged. Now, if the jury is to judge of the law, I insist that the jury shall give their reasons, and that those reasons shall be reported. I should like to see the gentleman for Wilbraham, (Mr. Hallett,) made the reporter of all the decisions of the juries in the whole Commonwealth of Massachusetts. Then, perhaps, we should know what the laws are, under which we are to live.

But if this resolve passes, and a person comes to me and wants to know what the law in a civil case is, I can tell him. Here is a statute that has been interpreted by the supreme court, upon full deliberation, and they have decided that it is so and so, and every jury impanelled must follow that decision. If the law is not popular, the people, through their legislature, can alter it. But if he comes to me with a criminal case—which is vastly more important to him than a civil case, as it involves his life, his property, his liberty—I would have to say to him that the Convention of 1853 passed a resolve, at the suggestion of the gentleman for Wilbraham——

Mr. HALLETT, (interrupting). Not upon my suggestion.

Mr. DANA. Well, I pass that by, since he disowns it, as it will consume my time.

Mr. HALLETT. The gentleman says the Convention passed it at my suggestion. It is not so. Six gentlemen have reported it to the Convention.

Mr. DANA. Well, the Convention passed a resolve at somebody's suggestion, that the jury is to settle these matters. Now, my dear Sir, I cannot tell you the law for the life of me. It depends entirely upon the twelve men you may happen to get to try you. One jury of twelve men may think the law applicable to your case constitutional, and another may think it unconstitutional, and you may be acquitted or convicted accordingly, and, what is more, you never can find out the reason why you were acquitted or convicted.

The consequence of this would be, that in Boston the fugitive slave law will be constitutional, and in Worcester it will be unconstitutional, and the Maine law *vice versa*. The result is, we shall have no settled or certain law. A law will be constitutional for you and not for me, and constitutional for me in one place, and on one day, and not constitutional for me in another place, or at another time.

Now, what is the result under the present system? The judges instruct the jury, and the jury take the law from the court, and the facts from the witnesses. They go out, and find a general verdict upon both law and fact. If we think the rulings of the court were wrong upon the law, we take exceptions, and go to the supreme court, and they determine the law and reverse the judgment, if the charge of the judge below was wrong. If the supreme court does not decide it satisfactorily to the people, the people, through the legislature, can repeal the law and overrule the decision. The decision of the court is not final, for the legislature control the court. I beg gentlemen to understand that they are not under the control of the court. If a man is convicted under a wrongful decision, he may be pardoned by the executive, and reinstated or reimbursed by the legislature. But if he is wrongfully convicted by the

jury, the cause can never be legally known, and he cannot, therefore, be so certainly or properly redressed.

[Here the President's hammer fell, fifteen minutes, allowed by the rule for debate to each individual, having expired.]

Mr. ALLEN, of Worcester. It may be somewhat rash in me to think of supporting the resolve. I find myself unable to act in conformity with the experience of my conservative friend who has just spoken, (Mr. Dana,) and also with the conservative gentleman from Cambridge, (Mr. Ladd,) and I find myself upon the side of that rash and progressive innovator, the delegate from Cambridge, the former chief justice of New Hampshire, (Mr. Parker,) for upon this very question, as already intimated, that distinguished gentleman and his associates have determined that the law in this country, and in the country from which most of our ancestors came, was always in conformity with the principle presented through the resolve now before us.

Sir, it seems to me, that the pangs and fears which haunt my friends, at the very idea that a jury should be allowed to pass upon the law in criminal cases, after all the opportunity they have had, derived from the instruction of a learned court, results from an unreasonable distrust of that institution. And that is the radical difference which separates, I apprehend, some of us from the others. The fear is, that that which our fathers regarded as the palladium of our liberties, should prove to be their destruction, and that there is no safety for freedom to be found but upon the bench. Now, Sir, I have no such fear. Neither the experience of the past, nor my own reflection, have filled me with any such apprehensions. In the course of a somewhat long professional career, from year to year, I have learned to respect more and more the decisions of juries. I have learned to rest there as the last resort and defence of my liberties, my rights, and my privileges. The legislature may pass unreasonable and unconstitutional laws, and conservative courts may sustain them, but I will trust to the jury, with the Constitution and the Bill of Rights in their hands, to protect me against any unconstitutional or unreasonable dangers. Sir, in ordinary cases, the juries will always take the law from the court, which relieves them from great responsibility—a responsibility from which they seek to be relieved. Inasmuch as they take an oath to act upon the law and the evidence, and to decide rightly, they may consistently with the obligations of that oath, leave the law to the opinion of the court.

But there are great cases which sometimes arise in the history of a nation, in which fundamental principles are assailed, when you cannot rely entirely upon the legislature or upon the courts; when your defence must come from the people themselves, from the juries who are of the people. Sir, the Bill of Rights declares certain great principles, and secures certain privileges, among which are that all men are born free and equal, and that they have the right to defend their lives and liberties. Now if a law is passed which contravenes these rights, I do not believe it should be left entirely to the court to determine what the law is. I believe the people themselves have the right to this security, not only against the legislature but against the court too. I believe the jury have the right to say whether, in their opinion, a law violates a fundamental principle laid down in this Bill of Rights. They will spurn the opinion of the legislature, and of the courts, and all human authority that can be combined, and standing upon the charter of all men of Massachusetts, will declare the law to be unconstitutional.

Such cases have arisen, and I wish I had time to speak of them more at length. But I will confine myself to one, and that is the law passed by the congress of the United States. I would not at this time introduce the subject myself, but it has been introduced, and now I say that, in my opinion, a law more unconstitutional, more deadly and vital in its action upon human liberty, could never have been framed. And how was it done? It stands upon the records of congress, and let it stand upon the records of Massachusetts. Why, Sir, men more desirous of protecting the power of the slave-holder over the slave than of securing the rights of the millions of the free, demanded farther legislative enactments. A piece of white paper—for I will not use French when I can get good economical English—was given to a nullifier, a member of the Senate, from one of the southern States, and upon that he wrote what he pleased, and upon it he inscribed one of the most arbitrary enactments, and in one instance holding forth a bribe to the commissioner to send a man, may be a citizen of Massachusetts, into slavery. I trust, however, there are some men in Massachusetts, and in this Convention, above the influence of bribes. Yet the law does hold forth that bribe to induce the commissioner to send back into chains, it may be a citizen of Massachusetts, who may be claimed by a southern slave-holder. By another provision a citizen of Massachusetts is to be deprived of the right of trial by jury, here at home, where his witnesses and counsel can be obtained; and not only here, but everywhere, for it is in vain to say that he could obtain the benefits of that trial in South Carolina, where his

counsel could not go, and where his witnesses, those of his own color, could be enslaved.

But I will not go into this matter, but will only say farther, that it would have rejoiced my heart, when that question came before the supreme court of Massachusetts, in advance of any decision made upon it by the supreme court of the United States, and unrestrained as the court was, by any decision given by the court of the United States, if they had declared it against the fundamental rights of the people, and unconstitutional and void. That day would have done honor to the judiciary of Massachusetts, and the page which contained the record of such a decision would have been the brightest in the history of Massachusetts.

Sir, I declare these views, and I wish to put them upon the record; and if I am not sustained by the opinion of men around me, I ask the decision of posterity upon the words I now utter, if ever they—in looking over the proceedings of this Convention—shall take notice of the opinion of one so humble as myself.

But the court did not do that. I do not intend to reproach that court. I have a high respect for it, and in regard for the venerable chief justice who has presided over it for nearly a quarter of a century, I yield to no man. Yet certain influences did bind and control the court, and, in that instance, their decision, instead of reflecting honor, will reflect disgrace upon the history of Massachusetts. It will be in the history of that court, a blot upon its fair pages. Not in that case alone, but whenever the principles which we declare to be at the foundation of our frame of government are infringed upon—whenever the rights which we reserve to the people are invaded by any law, I ask, that in that case, a jury coming from the people may be allowed to come in and give their judgment, and rescue the people, in the name of their declared rights, from an unconstitutional law, or from an unconstitutional interpretation of that law.

The fears which have been suggested of difficulty, from the fact that jurors may differ as to the construction of a law, I apprehend, is but a technical difficulty, and would not be found to exist in fact.

But it is said that juries would not decide alike upon the same law. Well, Sir, have judges always decided alike? Does not my friend for Manchester, (Mr. Dana,) know that there are volumes of decisions given by the judges reversing former decisions? Why should not juries decide unlike? Because one decision is wrong, should both be wrong?

Mr. DANA. I can answer the gentleman.

Mr. ALLEN. I have not time to yield to the gentleman. I have no doubt of his ingenuity to answer any difficulty that could be raised. We have seen enough of that gentleman's ingenuity. I suppose he would answer that it is impossible for a jury to decide every little quibbling doubt that may be raised by an attorney—that they could not retire to decide such questions. I suppose the gentleman would answer by such arguments as that, but I hope he would not puzzle this great jury. I hope he would not lead them to abandon this great and important principle, because of the ingenious difficulties which he might raise in every possible case against carrying that principle out. That gentleman knows very well, that when we have a great and sound principle before us, it is our duty to carry it out as far as we can; and when it becomes impracticable, or inconsistent to adhere to it, we are not to be censured for failing to do what we cannot do.

Fears and difficulties have been introduced here to affect the minds of temperance men—and I am happy to know that a large majority of the members of the Convention are of that class—that the jury will not be true to them. Now I ask the friends of temperance from what quarter they have met with the greatest hinderances? Has it been the jury in Rhode Island, who have found flaws with every complaint which has been brought up? Is it the jury who throw obstacles in the way, when such cases are brought up? When facts, evidence, and experience, prove that a law is a wise, wholesome, and equitable law, has it been the jury who were found to set aside that law? Has it not rather been the courts who have met at the threshold every attempt to carry out the law? Have not these difficulties arisen with the bench, and not with the jury? But, Sir, I see my time has expired, and I will not proceed farther.

The PRESIDENT. The gentleman has two minutes remaining.

Mr. ALLEN. Two minutes—well, Sir, that is enough to answer the argument of the gentleman from Boston, (Mr. Hillard,) that it is not democratic to allow one man to stand out against eleven in deciding a question of law. Yet it is very democratic for one man to stand out against eleven bringing in a verdict of guilty, when he believes, from the bottom of his heart, that the man is not guilty. Is it democratic for the majority to govern in the jury-box? The gentleman says, he has never been in a town meeting. Surely he has been in a court-house. Yet it is a wholesome, humane law, that a majority of a jury shall not convict a man, and incarcerate a man in prison. It is a just and proper rule, that

a man shall not be deprived of his property, his reputation, or of his life, until twelve men have agreed that he is guilty of a violation of that law.

[Here the hammer fell.]

Mr. PARKER, of Cambridge. The honorable gentleman from Worcester, (Mr. Allen,) is under a misapprehension respecting the decision in New Hampshire; and however much I may desire to stand by the side of that gentleman, I cannot have that pleasure upon the present occasion. The decision to which he refers—which the gentleman representing Northborough characterizes as "respectable," and which, according to the remarks of the gentleman representing Wilbraham, (Mr. Hallett,) was an outrage upon the rights of the jury—was the other way.

Sir, I have perhaps as little interest in the decision of the question now before the Convention, as any member of the community. I have no particular anticipation that I shall be placed at the bar of a court in such a position that I shall have occasion to appeal from the law of the bench which leaves my case hopeless, to the law of the jury, with the hope that they will overrule it. I have no supposition that I shall find myself again at the other bar, defending a party accused of crime under such circumstances, that I shall desire to shake my finger at the judge upon the bench and say: "Sir, you may believe after all your studies, that such is the law, but here is a tribunal that will overrule your decision, and they have the right under the Constitution to do it." Still less have I any expectation that I shall ever again be placed in a situation where the counsel may beard me in that manner.

But, Sir, as my attention has been called to this subject in former years, and I am a member of the Committee on the Bill of Rights, from which this Minority Report comes, it may be expected that I should take a part in this debate, more especially as the chairman, by signing this Report, appears to have gone over to the enemy. The case in New Hampshire occurred in 1842. It was a prosecution under the law of that State passed in 1838, prohibiting the sale of liquors in any quantity, without a license from the proper authority. It was my fortune to preside at the trial in the common pleas. Two individuals composing a mercantile firm, were indicted for selling a barrel of gin without a license. They were defended by the gentleman who represents Wilbraham, (Mr. Hallett,) and another distinguished gentleman who has since been a candidate for the highest office in the gift of the people, (John P. Hale,) and of course we know that they were defended with all the zeal and all the ability which could be brought into requisition in such a case.

Several questions were raised in that case, and among them a preliminary question in relation to the organization of the jury. Questions were put to the jurors, and as that course has been censured here I will state them, that gentlemen may see how far courts go upon that subject. The questions were:—

"1. Have you formed an opinion that the law regulating licensed houses is unconstitutional, so that you cannot convict a person indicted under it, if the facts alleged in the indictment are proved, and the court hold the statute to be constitutional?

"2. Do you hold any opinion upon the subject of the license laws, so called, which will induce you to refuse to convict a person indicted under them, if the facts set forth in the indictment, and constituting the offence, are proved against him, and the court direct you that the law is constitutional?

"3. Do you hold any opinions upon the subject of the license laws which will induce you to convict a person if the court shall direct you that the statute under which he is indicted is unconstitutional?"

The object was to obtain a jury which could come to the performance of the duty, with such opinions as would permit them to try the case according to the evidence before them.

Other questions were raised on the trial. One was, whether the jury were judges of the law as well as of the fact. Another, whether the law itself was constitutional. It appeared that the barrel of gin was purchased in Massachusetts, brought to New Hampshire, and sold in the same condition in which it was purchased; and it was contended that the law was unconstitutional in its application to that case, by reason of the provision of the Constitution of the United States, giving to congress the power to regulate commerce.

Mr. HALLETT. I ask the gentleman to allow me to correct him. I did not raise the question that the jury were the judges of the law and fact.

Mr. PARKER. Then I have been laboring under a misapprehension for more than ten years. It was so put upon that occasion.

Mr. HALLETT. Not by me. I did not say the jury were the judges. That position was not taken by me, but that they passed upon and determined all questions of law and fact in the case.

Mr. PARKER. If such was not the exact phraseology, it was substantially the position taken. It was said that the jury had the power to judge of the law, and that this proved conclusively that they had the right to judge of the law—that the power carried with it the right,

as a matter of course. And I do not know what that means unless it is that the jury are the judges of the law. That position was distinctly stated by the gentleman again and again. These questions were argued before the jury with all the learning and power of that gentleman, and without any objection upon the part of the court. But the court in charging the jury, instructed them that juries were not judges of the law, and that the statute of New Hampshire was a constitutional act.

The jury were of opinion against the defence upon one or the other of these points, and returned a verdict of guilty. The case was carried before the superior court of New Hampshire, and both these rulings sustained. It was then carried to the supreme court of the United States, upon the last point—that of the constitutionality of the law—and the decision was affirmed there.

Now, here is another case which the gentleman for Wilbraham will never forget. He lost it; and I attained the bad eminence of being chronicled in some of the newspapers as an arbitrary judge; as second only to Chief Justice Jeffreys. The gentleman may perhaps recollect something of that. Chief Justice Durfee, of Rhode Island, was afterwards added, I think, to make up a trio.

Sir, I have no time to go into an argument upon this question whether the jury are judges of the law, as well as fact. I had occasion to express my opinion in that case, and it is upon the record. I have no doubt that in England, at the earliest stage of their legal proceedings, of which we have knowledge of juries, they were judges of the law as well as of the fact, not only in criminal cases, but in civil cases. For a long period, they were punishable if they gave a false verdict. They were anciently the principal witnesses, also. They were summoned from the vicinage—from among those who were supposed to have the best knowledge of the facts of the case, and were expected to decide from their own knowledge, more than from the evidence which was presented. Cases were sometimes decided by battle, and by ordeal, also, in those days. But, Sir, the law is in the ranks of the progressives. It has made progress since that time, in divers particulars, and among others, in the mode of trial by jury. The jury are no longer to judge from their personal knowledge of the facts of the case, and courts set aside verdicts, and arrest judgment after verdicts. It is fully established and understood that juries are not judges of the law in civil cases; but they pass upon the law and the fact in a general verdict; and the question has arisen, whether the same change and adaptation of rules does not apply in criminal cases as in civil cases. That is a question upon which there has been a great difference of opinion upon the bench and elsewhere.

The case referred to by the gentleman for Wilbraham, where the jury, as he said, took the matter into their own hands, I do not understand to be a case in which they undertook to settle the law. It seems they settled the fact that there was no witchcraft.

The case which he refers to, before Chief Justice Jay, of the supreme court of the United States, was not, as he supposes, a decision that the jury were the judges of the law in criminal cases. As reported, the chief justice declared that they were the judges of the law generally, and the case was a civil case. Now, I maintain that the right of the court to set aside the verdict and to arrest the judgment, is altogether inconsistent with a right on the part of the jury to decide questions of law either in civil or criminal cases. When juries exercise a right of that kind, while at the same time the court overrules their decisions, the judicial system is incongruous. The right may be conferred even by statute. But, if you incorporate this provision into the Constitution, and a jury convict a man upon charges, which in the opinion of the court are not sufficient, or not sustained according to law, I doubt whether the court, upon principle, can have the power to set aside the verdict or arrest the judgment. It is not quite clear to my mind, that if this provision is adopted, your courts can consistently exercise such powers in any criminal case.

I have but a moment left to speak of the practical operation of this provision, if adopted, and, instead of enlarging upon this topic, as I should otherwise desire to do, I ask leave of the Convention to read a paragraph from the charge given to the jury in the case in New Hampshire, as published in a pamphlet at the time:—

"It is contended that the defendants are not liable, because the act of 1838 was unconstitutional. Whether it is unconstitutional or not, is a question that should be settled in some way. How is it to be settled? If the doctrine so earnestly contended for, be correct, it never can be settled, so far at least as criminal cases are concerned."

[Here the hammer fell.]

Mr. BUTLER, of Lowell. Sir, I can promise the Convention that I will not occupy much time upon this matter.

Mr. PARKER. I dislike to trespass upon the courtesy of the Convention, but I wish to read the remainder of the paragraph which I had commenced.

Mr. BUTLER. I will give way.

Mr. PARKER read as follows :—

"If the constitutionality of this statute may be drawn in question in a civil case, it may be settled so far as civil cases are concerned. But if the defendant's counsel are right, that would not settle it as to criminal cases. And no verdict would settle it in such cases; for, if one jury is to judge of the matter, every jury is to judge; and what each will judge cannot be known, until the matter is tried. Well, gentlemen, one man assumes that the statute is unconstitutional—he purchases in Massachusetts, sells the article here, and is indicted. The jury so find, and as to him the statute is unconstitutional. Another person seeing this, and thinking the laws operate equally on all, does the same. He purchases the same kind of article, from the same dealer in Massachusetts, brings it here, and sells it in the same condition, to the same individual to whom the first sold. He is indicted, and another jury find the other way. As to him, then, the law is constitutional. Take the case of the same jury, sitting in a civil, and then in a criminal case. A civil case arises which involves the constitutionality of the law. The court rule that it is constitutional. The juror is bound to regard that as the true construction, and his conscience returns a verdict accordingly. The law is constitutional. A criminal case follows, which involves the same question. The juror is sworn to the same effect—that is, to give a true verdict. But he disliked the instruction in the civil case; his conscience turns round, and he holds the law to be unconstitutional. And so his conscience must keep turning, as it encounters a civil or a criminal case. If it is a civil case, he has a civil conscience. If a criminal case, his conscience is of a different character."

Mr. BUTLER. Well, Mr. President, I wish to say, before I go on with my remarks, that that is the longest paragraph that I ever listened to. [Laughter.] I cannot forbear entering my protest against what I deem to be an innovation upon the old rule of common law. So far as I have learned anything with regard to this question, from my earlier teachings, from the early books that I read, and from the old lights upon English common law, it was laid down, not as a principle, not as an axiom, not as a rule, but as a boast—for it was a boast of the common law—that juries were judges of the law as well as of the fact, in criminal cases. And my heart kindled, Sir, as I read of the struggle between the people and crown, the court and the jury, for this right, as I gradually saw that great right rising on the dark horizon of law, like the morning sun, until it illuminated the whole system; and, Sir, I thought that nothing was better settled in this Commonwealth; aye, Sir, as nothing had been better settled in England, nothing was better settled in this country, than this doctrine. And, Sir, the first shock that my mind received, the first time anything came across me to unsettle it, was when I read the charge, the last paragraph of which we have just listened to, made to a jury by the gentleman from Cambridge. And again the blood stirred within me on reading that charge, but with a different feeling; and notwithstanding my great respect for the gentleman who delivered that charge, every drop of my blood boiled in my veins under the idea that a judge should tell a jury that they had not the right to determine the law and the fact in criminal cases. Sir, the Knapps were hung on that instruction of the law. The court sitting on that case said to the jury, "You have a right to judge the law and the fact, and no man can step between it and you." But when it becomes popular in a community to carry a favorite measure through the courts, or to convict an unfortunate criminal, then it is very convenient for a judge—to do what? First, when a man is to be tried by his peers, and when they get into the jury-box, to weed them out, so as to try him by a set of men who are not his peers, who have no fellow feeling, but men who, by their position, feelings, and sentiments, are dissimilar. The judge, taking care to weed the jury-box of every man who has the same set of feelings, then proceeds to try him, not by his peers, but by some picked and packed set of men. Sir, I detest, I hate and despise, this abominable business of weeding the jury-box and attempting to try men not by their peers. In some short practice which I have had, I have seen something of a number of jury trials; and I take it upon me to bear my testimony, most solemnly here, as I would before my God, that I have seen quite as many errors on the bench as in the jury-box; and I speak it with great respect to the learned courts which have administered the law.

The jurors have no occasion to be afraid of the people, for they are the people, in their primary capacity. Who is the judge? A learned man, an honest man, a high-minded man; but still a man. What is to be tried? The intention, the thoughts, and as they bear upon the actions of another man. Which is the best tribunal to try that case? This man who sits upon the bench, and who has no sympathy, no fellow feeling, nothing in common with the people; who has hardly seen a common man in twenty years; and lest he should see one, always has had a sheriff, with a long pole, to attend him and keep them off. [Laughter.] Is he the better man to try the case than they who have the same stake in community, with their wives, and children, and their fortunes, depending on the integrity of the verdicts they shall render?

Who, I ask, is the best fitted to constitute a tribunal to try him? And why can they not judge of the law? What is the law in criminal cases? There is a distinction which does not seem to have been adverted to here. What is the law in criminal cases? It is not complicated. In a civil suit, the law which applies to it, may be complicated; but in criminal cases, it is always a plain proposition upon which the jury have to pass, with or without the instruction of the judge, a very plain proposition. Let us see how it is. In the first place, every man is bound to know the law; and ignorance of the law will not excuse him if he commits a crime against the law. He is by the law bound to know the law, and to be punished if he commits a crime, even if he does not know it. Very good. Yet you say, this criminal being bound to know the law, and act upon his peril, twelve men who are supposed to be as learned, or more learned than he, do not know enough to try him for breaking that very law which he was bound to know. Will that do for a moment? That is all there is about it. The crime consists in what? In doing some act against conscience and against law with an intent to break it, or else the man is not guilty. Yet you say, that twelve other men, who are also bound to know the law, are not the proper persons to try him. You say this criminal must be punished, and even hanged, because he ought to know the law, and yet these other men are not fit to try him because they do not know the law. Will gentlemen tell me that the judges, reported in tenth Metcalf, did not know that this was so. It is true they stultified themselves when they undertook to say this, to wit: that jurors had the power to judge of the law, but had not the right; or speaking as lawyers, they had the power to do wrong. I deny it. There is no power to do wrong. The gentleman from Cambridge put it exactly when he said, that the power always drew after it the right. I thank him for that. The gentleman from Cambridge said that.

Mr. PARKER, of Cambridge. If the gentleman will allow me, I wish to state, that I said that was the argument, that the power showed the right. It was the gentleman for Wilbraham who used that argument.

Mr. BUTLER. Well, I will put it to the gentleman from Cambridge himself, if a man—speaking as a lawyer to a lawyer—has the power to do a thing, has he not the right to do it?

Mr. PARKER. If the gentleman from Lowell will look at the thirteenth New Hampshire Reports, he will see that I have denied such a conclusion distinctly, and the reason for the position.

Mr. BUTLER. I have had an opportunity to look at it. I say, that a man has no power to do wrong. It is a misconstruction of language to say he has. He has no legal power to do wrong: he has the power to murder; but that is not a legal power; it is a usurpation, it is an interference. The judges of the courts have said that jurors have the power to render a verdict upon the law, but not the right. They have said, the jury shall hear the arguments of counsel on both sides, upon the law, but not deliberate upon or judge of that argument. And that was to get out of a dilemma.

It seems to me, that the law is well settled. I remember that when a very old doctrine was preached, a doctrine found in the New Testament, that a certain man went into a great city where there was a temple, and when he preached that doctrine, he drew after him a number of others, who cried out pretty loudly: "Great is Diana of the Ephesians." Well, why did they do that? Because a man who was a coppersmith, and made shrines for Diana, feared for his craft, that was in danger. Sir, I think we have a kind of craft here, and I think I have heard the cry of Alexander the coppersmith here. [Laughter.]

No, Sir, I would have no such fear of danger; I think we are not to make a Constitution here, because somebody has given a decision in one State or another. I wish to commend—as I shall not ask anybody else to stop while I read an argument—to the gentleman from Cambridge, the last volume of the Reports of the court of Vermont, where he will find the thirteenth New Hampshire, and tenth Metcalf handled without gloves. That learned court decide, that jurors have the right to determine both the law and the fact.

One thing farther. The gentleman from Cambridge says, that courts have the power to set aside a verdict. That is the "usurpation." I ask if that doctrine has not come down from Jeffreys? It has grown up to be a practice in tenderness to human life and liberty, that while a verdict may be set aside, which is against a criminal, it never can be set aside, when in his favor. If the jury once find a verdict of not guilty, there is no power that can interfere between him and his crime, if he has committed a crime. No court can set it aside. The next usurpation was for the court to lay its hand upon the law—for they are a body sitting in permanence, reaching and grasping a little more—God made them so to do, for he made them men——

[Here the time expired.]

Mr. LORD, of Salem. Mr. President——

Mr. PARKER. If the gentleman from Salem will permit me, I wish to say one word only. I

wish to say that if the gentleman from Lowell has read the dissenting opinion in the Vermont case, he has doubtless seen an opinion surpassing in ability altogether, that given by the majority of the court.

Mr. BUTLER. That depends upon the spectacles one reads through. [Laughter.]

Mr. LORD. I hoped that when the gentleman from Cambridge alluded to a particular branch of this subject, he was about to develop his views upon it more fully, than even if he had devoted all the rest of his time, he would have had an opportunity to do. It was upon this point, whether, if this resolution is passed, there is the power in any tribunal, to revise the decisions of a jury upon a matter of law, however unjust that decision may be. Take the case put the other day, by the gentleman who represents Wilbraham. He says the judges of the court gave an extraordinary construction to that law, which required two witnesses in case of treason; and I ask if jurors should come to such a conclusion as that, is there any power to revise such a decision on the part of any one? I asked the gentleman for Wilbraham, also, to consider his own position in reference to another proposition, that the jurors shall have nothing to do with the matter of evidence. Suppose a party is indicted for libel, and the party indicted undertakes to offer evidence of the truth of that libel, and the court rejects that evidence, will he have the party convicted, or must not his principle lead him farther, to say that a jury in a case of libel shall have the right to demand evidence of the truth, if the party proposes to offer evidence of the truth?

The gentleman from Worcester made an appeal to the friends of temperance, to know who it was that was interfering with the due execution of the law, the jurors or the judges; who was it that was picking flaws in complaints and indictments. Would he have jurors pick flaws in complaints and indictments? The Constitution of this Commonwealth used to say, and I believe it says now, that no man shall be held to answer to a charge of offence, unless the same shall be fully and fairly, plainly and substantially, set out. Who shall decide on that great constitutional question? Shall the court decide it, or shall the jury decide it? Gentlemen on the jury know just as well whether a party is properly charged with an offence, as whether that party is guilty of the offence.

My mind has been somewhat exercised upon this subject, and what I desire is that some gentleman will explain to me the exact point where the jury shall have control over the rights of men —where it shall begin and where it shall end; but no man can do it in fifteen minutes. Everybody knows that the whole of a criminal charge depends upon the evidence; the evidence may be excluded by the court, and yet, if the evidence exists, it may have an effect upon the minds of the jury. Perhaps the evidence might have been more satisfactory; but whose minds are to be convinced as to whether the matter proved is in violation of law? The jury's. Under this proposition, whose minds are to be convinced as to what the law is? The jury's. Now, Sir, here is an enactment of the legislature. Men may possibly differ as to the exact meaning of the statute—not whether it is constitutional or not—but as to the meaning of the statute; and who is to interpret that statute, the jurors or the court? These are questions which no gentleman has undertaken to answer. There are difficulties in this very plausible and beautiful theory; and, Sir, I am not prepared to embrace it, for I cannot do so without risking the liberty of the subject to a degree to which I am not willing to risk it.

I was somewhat struck by the extraordinary statement of the gentleman from Worcester, (Mr. Allen,) in regard to a particular law which has been passed by congress; and that gentleman desired to leave his statement upon record, that it was as gross as violation of the Constitution, and of the rights of man, as could be conceived of. I should be most happy to have him tell the reason for his opinion, for I am not aware that there is any principle in that law which is not upon our own statute book—not one. The party, of which that gentleman is a member, has been in power for two successive years here, and yet I have never heard of their endeavoring to repeal any of the provisions of these laws. Take, for example, what he calls bribery. If a magistrate under that law adjudges a party to be guilty, he gets more fees than he does if he discharges him. Very well; and so does any justice of the peace, if he convicts a man of an offence in this Commonwealth; but I never heard that called bribery. There is not a justice of the peace in this Commonwealth who does not get more money if he convicts a man, than if he acquits him. Is that bribery? Why should men use such language as that, to excite prejudice against a law, and render it unpopular?

There is another provision, and it seems to me the most objectionable provision of the fugitive slave law which is this: Any man may go before a commissioner of the court, and get the custody of another man, and carry him off—there is no jury trial. But is there not just such a law upon our own statute book? If an apprentice runs away

from his master, the master can go before a justice of the peace and make his complaint, and that justice of the peace may order the apprentice into the custody of his master; he may even authorize the master to carry that apprentice beyond the county where the justice of the peace has jurisdiction. Why did not the gentleman's friends repeal those laws which interfere with individual liberty? And we have another law, providing that paupers may be sent out of the country—there is no jury trial about it; but yet I never heard anybody get up and say that these were most monstrous infractions of personal liberty! No, Sir; there was nothing to be made out of it in these cases; when you send a poor pauper back to Ireland, there is no chance to make political capital out of that infraction of personal liberty. Sir, I do not rise to defend the provisions of that law at all; but my difficulty is to know how men can sit here quietly and say that that law is not only a violation of humanity and human rights, but of the Constitution of this Commonwealth, and the Constitution of the United States, when we have just such provisions on our own statute book, and nobody is ready to raise a finger to wipe them off.

The gentleman from Lowell suggested that this matter would be likely to excite a prejudice against the legal profession. I never make that objection, because in such a case we make more out of it than anybody else. The more prejudice there is—the more noise is made about it, the more grist it brings to that mill. Now, every lawyer may make a constitutional argument to every jury upon any liquor case that comes along, —and some of them have a legion of them—in the hope that he might convince some one jury that the law was unconstitutional, and thus, perhaps, get his case. I think that is a question which we are not to consider at all in the discussion of a constitutional provision; but when it is put to our side of the House that the arguments which are made by gentlemen here, whose characters are altogether above suspicion, are influenced by any such considerations as that, I say it is only proper to turn round and say that it opens the door to a new field, in which the gentleman for Wilbraham has already appeared so conspicuously, and where the gentleman from Lowell is no very distant follower. The very question that it is proposed to introduce here—the argument of the law to the jury—is a field in which I believe, nobody has reaped except the gentleman for Wilbraham and the gentleman from Lowell; and having found it a little difficult, heretofore, to cultivate that field, they now propose to make it easier. Now, Sir, if we can adopt the principle in some such mode as to relieve me from the difficulties which I find in the way, and which I have suggested, and which nobody has answered, I am ready to go for it; but until these difficulties can be answered or obviated, I am not ready for it.

Mr. GRAY, of Boston. Having been on the Committee, I hope the Convention will indulge me in a few remarks, and I shall do my best to fall much within the time allowed. I admit, with the gentleman from Salem, that the boundary between the respective rights of courts and of juries, is a somewhat undefined and shadowy one. It is so, both in criminal and in civil cases. I will put an instance. Suppose the question arises, whether a man devises a lot of land to me or not—that is a question of fact for the jury to decide. I understand the statute to read, that every will should have three witnesses, and every judge would tell the jury so; but now the question arises, is the jury to decide on that point in rendering their verdict? How can you define their province in such a case? Or, take the criminal law; how can you define their province there? The gentleman for Wilbraham has read several extracts, to show that the court has agreed in his position; but I think there is a slight mistake there, and it grows out of this fact. Whenever the jury give a general verdict of guilty or not guilty, there is no power or right to revise that verdict. No man disputes that—the verdict cannot be revised. Where, then, is the power to be derived? Who is to draw the line between the province of the judge and the province of the jury, in general cases? The jury; because they have power to give a general verdict. What is to decide where the line ought to be drawn? The jury again, on their conscience. They are bound, on their conscience, as I understand it, to take the law from the instruction of the court, and to take its exposition of law as law. Suppose they refuse to do so. Suppose they consider that a case has arisen, one of those extraordinary cases laid down by all writers on law, in which a subject may judge for himself, not from law, but from the principles of moral right and wrong; who shall say whether they judge right or not? There is no power to revise their decision, for their tribunal is a sacred one—their judge sits at their own heart. Now, Sir, I admit what my friend from Salem seems to intimate, that this is not a desirable state of things. It might be better that we should lay down some tangible and visible boundaries, which will render it plain what the province of the judge is, and what the province of the jury is? But, Sir, can we do it? Admitting this to be an evil, and no one, I pre-

sume, will deny that, does this proposition remedy it? There is one objection that weighs on my mind, to which I believe no gentleman has adverted; and that is, that I do not wish to diminish the responsibility of the judges. Now, Sir, the judges in important criminal cases, are bound to lay down the criminal law. If a man loses his life or his liberty, if even a stigma falls upon him, the judge must bear the responsibility to the community. He cannot say: "I told the jury what I thought the law was, and it assumed the responsibility; if an outrage has been committed on the community, lay the blame on the jury, but do not charge me with it." It is, as the gentleman from Lowell very truly said: the judges are but men; and the moment you lessen their responsibility, you take away from them a motive to exercise their power thoroughly and faithfully, which is, in many cases, a delicate and difficult thing, and sometimes renders him obnoxious even. Let gentlemen read the trial and conviction which resulted in what may be the last execution to take place in Massachusetts. Let them look at the position which the court held, and let them say whether there are many judges who would have laid down the law so fully and clearly as that chief justice did. I believe he would do the same again; but can you rely upon every judge to take such a painful and obnoxious position, and one which, in the eyes of a public sentiment and of the public press, as well as of a great many people, was a most odious position? The position taken by the court then, was most odious; for the time being, I mean. I cannot vote to diminish that responsibility; and, farther, I cannot vote to enjoin on the jury to decide as to the law, and to take the responsibility for so doing. I cannot agree to put it in the power of juries to say: "Here are our learned judges—they have told us what the law is—we would be thankful to rest, in some measure, upon their suggestions, but we are not allowed to do so, and the people hold us responsible." All this might be very well, and might operate in a proper manner, if we were sure that juries would always want to acquit, and that they would never be tempted and biassed to convict wrongfully.

Gentlemen talk about trusting the people. Now, Sir, the people of California are a brave and a free people; but, Sir, have we not reason to think that juries in that community would be tempted to bring a man in guilty in certain cases, where the strict interpretation of law would acquit him? Is there no such thing as popular violence? The juries and judges in the witch cases, were referred to by my friend for Wilbraham; but it was not the court that was to blame, it was a vitiated public sentiment; it was the power of the clergy, then too great; but I think that has been remedied and more than remedied since. It was this current of public feeling that murdered those poor creatures. Why, Sir, when the first jury brought in the first verdict of not guilty, a cry went through the court-house; the whole community, with one voice, were most earnest for blood, and blood they had. The very first impulse of popular feeling that then existed, for the acquittal of these persons, was followed by the verdict of this jury in their favor. But these Constitutions and laws are to protect a person from popular fury; these guards are thrown around him, so that, when he is accused, he may be tried before twelve men good and true; and, if they unlock his prison door, the voice of thousands of people can do nothing to gainsay it. Is there nothing for the court to do, in criminal cases? Gentlemen speak of the common law as though it was perfectly easy for any man of common sense to understand all about it, without any study; but, does not every gentleman who has studied the common law as much as I have—and I have studied it considerable—know that the common law is not always common sense? There is a great deal that a man would not know, unless he studies the statute. In the case of criminal law, who knows exactly what murder is? I do not—nobody knows. It seems a very simple question. If a person lies in wait for a man and assassinates him, you and I know, and every man knows, that is murder; but who can tell, unless he has examined the statute, whether the firing of a gun carelessly, by a drunken man, in a crowd, is murder, or something else?

Sir, there are nice distinctions in the criminal law—not so much as in the civil law—and the jury may decide them. Now where is the evil? Where are the men unjustly convicted? I do not say that there are no evils, but I ask how has the administration of criminal justice been? Why, Sir, it is most merciful. If the jury judge of the law, and judge of it in a way that makes against the prisoner, the court has now a power which I fear this resolve would take away. If a jury are in favor of a prisoner, their verdict cannot be revised; and why? Not on any general principle involved here, or that the jurors are sole judges of the law. No, Sir; I think you give the scales a cast on a general principle in favor of life and liberty—that every chance short of endangering the welfare of the community, shall operate in favor of the prisoner. Therefore, while I admit that the boundary is not so well defined as it might be; while I admit that it seems, and perhaps is rather a perplexing doctrine

to say that a jury may bring in a verdict of guilty or not guilty, and nobody impeach them, on the whole matter, and yet that they are bound to take the law from the court; in other words, to say that they must take the law from the court and then decide against that law, seems to create a confusion of boundaries between the province of the courts and the province of juries, not only, I think, in criminal, but also in civil cases. But I fear that if we debate this resolve much longer, we shall make the remedy worse than the disease.

Mr. WALKER, of North Brookfield. I rise to move the previous question.

Mr. HUNTINGTON, of Northampton. I wish the gentleman from North Brookfield would withdraw his motion. I have an amendment to offer, which the friends of this proposition do not object to. I think my amendment will obviate many objections that have been made to this proposition.

Mr. WALKER. Will the gentleman renew the motion for the previous question when he offers his amendment?

Mr. HUNTINGTON. It is a thing that I never did, and I am not disposed to do it now.

Mr. WALKER. Then I am sorry to say that I cannot withdraw the motion.

The question was then taken on the motion for the previous question, and a division being demanded, there were—ayes, 159; noes, 75.

So the main question was ordered.

Mr. GARDNER, of Seekonk, moved that when the main question be taken, it be taken by yeas and nays.

The yeas and nays were ordered, the question being on the second reading of the resolve.

Mr. WILSON, of Natick, moved a reconsideration of the vote by which the yeas and nays were ordered.

The motion to reconsider was agreed to, and the question then recurring on the order for the yeas and nays on the main question, the yeas and nays were ordered.

The question on ordering the resolve to a second reading, was then taken, with the following result—yeas, 192; nays, 145:—

YEAS.

| | |
|---|---|
| Abbott, Josiah G. | Barrett, Marcus |
| Adams, Shubael P. | Bates, Eliakim A. |
| Allen, Charles | Bates, Moses, Jr. |
| Allen, James B. | Beal, John |
| Alley, John B. | Bennett, Zephaniah |
| Allis, Josiah | Bigelow, Edward B. |
| Alvord, D. W. | Bird, Francis W. |
| Austin, George | Boutwell, Geo. S. |
| Baker, Hillel | Boutwell, Sewell |
| Bancroft, Alpheus | Breed, Hiram N. |
| Bronson, Asa | Howard, Martin |
| Brown, Adolphus F. | Hoyt, Henry K. |
| Brown, Alpheus R. | Hunt, Charles E. |
| Brown, Hammond | Hurlbut, Moses C. |
| Brown, Hiram C. | Hyde, Benjamin D. |
| Brownell, Joseph | Ide, Abijah M., Jr. |
| Bryant, Patrick | Jacobs, John |
| Burlingame, Anson | Keyes, Edward L. |
| Caruthers, William | Kimball, Joseph |
| Case, Isaac | Kingman, Joseph |
| Chapin, Chester W. | Knight, Hiram |
| Chapin, Daniel E. | Knight, Jefferson |
| Chapin, Henry | Knowlton, J. S. C. |
| Churchill, J. McKean | Knowlton, William H. |
| Clark, Henry | Knox, Albert |
| Clark, Ransom | Ladd, Gardner P. |
| Clark, Salah | Langdon, Wilber C. |
| Cleverly, William | Lawrence, Luther |
| Cole, Sumner | Leland, Alden |
| Crane, George B. | Loomis, E. Justin |
| Cross, Joseph W. | Marble, William P. |
| Cushman, Thomas | Marcy, Laban |
| Cutler, Simeon N. | Marvin, Abijah P. |
| Davis, Charles G. | Mason, Charles |
| Davis, Isaac | Merritt, Simeon |
| Day, Gilman | Monroe, James L. |
| Dean, Silas | Moore, James M. |
| Denton, Augustus | Morss, Joseph B. |
| Duncan, Samuel | Morton, Elbridge G. |
| Dunham, Bradish | Morton, Marcus, Jr. |
| Durgin, John M. | Morton, William S. |
| Earle, John M. | Nash, Hiram |
| Easland, Peter | Newman, Charles |
| Edwards, Elisha | Nichols, William |
| Ely, Joseph M. | Nute, Andrew T. |
| Fellows, James K. | Ober, Joseph E. |
| Fisk, Lyman | Orne, Benjamin S. |
| Fiske, Emery | Osgood, Charles |
| Foster, Abram | Packer, E. Wing |
| Freeman, James M. | Paine, Benjamin |
| French, Charles A. | Paine, Henry |
| French, Rodney | Parris, Jonathan |
| French, Samuel | Partridge, John |
| Frothingham, Rich'd, Jr. | Peabody, Nathaniel |
| Gardner, Johnson | Pease, Jeremiah, Jr. |
| Gates, Elbridge | Penniman, John |
| Gilbert, Washington | Perkins, Daniel A. |
| Giles, Charles G. | Perkins, Jesse |
| Gooch, Daniel W. | Perkins, Noah C. |
| Gooding, Leonard | Phelps, Charles |
| Graves, John W. | Phinney, Silvanus B. |
| Griswold, Josiah W. | Pierce, Henry |
| Griswold, Whiting | Pool, James M. |
| Hadley, Samuel P. | Rantoul, Robert |
| Hallett, B. F. | Rawson, Silas |
| Hapgood, Lyman W. | Richards, Luther |
| Hapgood, Seth | Richardson, Daniel |
| Haskins, William | Richardson, Nathan |
| Hawkes, Stephen E. | Richardson, Samuel H. |
| Hayden, Isaac | Ring, Elkanah, Jr. |
| Hazewell, Charles C. | Rogers, John |
| Heath, Ezra, 2d, | Ross, David S. |
| Hewes, James | Sanderson, Chester |
| Hewes, William H. | Sherril, John |
| Hobart, Henry | Simmons, Perez |
| Holder, Nathaniel | Simonds, John W. |
| Hood, George | Sprague, Melzar |
| Hooper, Foster | Spooner, Samuel W. |

Stacy, Eben H.
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wales, Bradford L.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Williams, Henry
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Allen, Joel C.
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Bennett, William, Jr.
Bigelow, Jacob
Bell, Luther V.
Bliss, Gad O.
Booth, William S.
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Brown, Artemas
Buck, Asahel
Bullock, Rufus
Carter, Timothy W.
Chandler, Amariah
Childs, Josiah
Clarke, Stillman
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Curtis, Wilber
Dana, Richard H., Jr.
Davis, Solomon
Dawes, Henry L.
Deming, Elijah S.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Eames, Philip
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Farwell, A. G.
Fay, Sullivan
Foster, Aaron
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Green, Jabez
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Harmon, Phineas
Haskell, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Johnson, John
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Kuhn, George, H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Abishai
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Nayson, Jonathan
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Park, John G.
Parker, Adolphus G.
Parker, Joel
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Read, James
Reed, Sampson
Sampson, George R.
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Sumner, Increase
Tileston, Edmund P.
Train, Charles R.
Turner, David
Upton, George B.
Walcott, Samuel B.
Walker, Samuel
Weeks, Cyrus
Wheeler, William F.
White, Benjamin
Wilder, Joel
Wilkins, John H.
Williams, J. B.
Wilson, Milo
Winn, Jonathan B.
Woods, Josiah B.

ABSENT.

Allen, Parsons
Appleton, William
Ballard, Alvah
Ball, George S.
Banks, Nathaniel P., Jr.
Beach, Erasmus D.
Beebe, James M.
Bishop, Henry W.
Blagden, George W.
Bliss, Willam C.
Brownell, Frederick
Bullen, Amos H.
Bumpus, Cephas C.
Butler, Benjamin F.
Cady, Henry
Choate, Rufus
Clarke, Alpheus B.
Cressy, Oliver S.
Cummings, Joseph
Cushman, Henry W.
Davis, Ebenezer
Davis, John
Davis, Robert T.
Dehon, William
DeWitt, Alexander
Easton, James, 2d
Eaton, Calvin D.
Eustis, William T.
Fitch, Ezekiel W.
Gilbert, Wanton C.
Greene, William B.
Greenleaf, Simon
Hall, Charles B.
Hathaway, Elnathan P.
Hayward, George
Heywood, Levi
Hobbs, Edwin
Hopkinson, Thomas
Kellogg, Martin R.
Knowlton, Charles L.
Little, Otis
Littlefield, Tristram
Lowell, John A.
Marvin, Theophilus R.
Meader, Reuben
Morton, Marcus
Norton, Alfred
Paige, James W.
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rice, David
Rockwell, Julius
Rockwood, Joseph M.
Royce, James C.
Sanderson, Amasa
Sheldon, Luther
Sherman, Charles
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Talbot, Thomas
Taylor, Ralph
Tower, Ephraim
Turner, David P.
Tyler, John S.
Tyler, William
Upham, Charles W.
Wallace, Frederick T.
Warner, Marshal
Wetmore, Thomas

White, George — Wilkinson, Ezra
Wilbur, Joseph — Wood, Nathaniel

Absent and not voting, 82.

Mr. EARLE, of Worcester, moved that the name of Marcus Morton be erased from the roll, that gentleman not being present when his name was called. He was in one of the committee rooms.

Mr. ASPINWALL, of Brookline. When the name of Mr. Morton was called, I heard a certain response. It was not exactly a negative, but seemed exceedingly like it.

Mr. FREEMAN, of Franklin. I believe I was the first who called attention to the fact of the gentleman's absence from the Convention when his name was called. He was in the room of the Judiciary Committee when his name was called.

Mr. MORTON. If there is any question as to my vote, I desire to say that I was not present when my name was called. I was in the Judiciary Committee room. If it is not too late, I will vote.

Mr. EARLE, of Worcester. I move that the response be erased.

The PRESIDENT. The response will be erased, so as to correspond to the fact. The resolve is ordered to its second reading, and will take its second reading to-morrow.

*Sectarian Schools.*

Mr. PARKER, of Cambridge. There is lying on the table a resolve on the subject of schools. This is a very important subject—one in which I have taken some interest, and I desire that it may be taken up at this time, so that it may be disposed of.

The PRESIDENT. The motion of the gentleman from Cambridge is not in order, the Orders of the Day being under consideration.

Mr. PARKER. Then I move that the Orders of the Day be laid upon the table for the purpose of taking up this subject.

The motion was not agreed to.

*Railroad Accidents.*

The Convention next proceeded to the consideration of the resolve on the subject of legal remedies to the representatives of persons killed by the negligence or misconduct of railroad corporations, as follows:—

*Resolved*, That where death is caused through negligence or misconduct, by means of railroads, steam-boats, or public conveyances for hire, the same remedies shall be open in a suit at law, as for like injuries to the person resulting in disability and not in death.

The question being on its second reading,

Mr. HILLARD, of Boston. I rise to ask the gentleman who is chairman of the Committee which reported this resolve, to state some of the reasons why a provision of this kind should be placed in the Constitution at all, any more than a provision as to drawbridges, or the guages of roads? I should like to know on what principle this is to be taken from the statute law and placed in the Constitution?

Mr. HALLETT. In reply to the question of the gentleman from Boston, I will state, that this subject was referred by the Convention to a Special Committee, who instructed me to report this provision. The gentleman desires me to give some reasons why it should be put into the Constitution. Sir, I shall not go into any elaborate reasons; but when that gentleman compares a subject of this magnitude with the guages of railroads and drawbridges, and matters of that sort, he could not have had his mind upon the appalling fact, that since this Convention met, in the month of May, the deaths caused by railroad and steam-boat accidents, as reported to us in the newspapers, amount to two hundred and twenty-two! Now, if there is any principle that should have prominence in a fundamental law, it is that the government should protect the lives as well as the property of citizens; and they should protect those lives by throwing around them all possible security. Your Bill of Rights says, that every person shall have a remedy in your courts of law for all injuries sustained by the hands of others. Now, while this wholesale slaughter is going on, and every man's life is in danger every time he passes to and fro upon these lines of travel, is it worth while to put a declaration into the Constitution that shall seem to say, "This work of death must stop"? Every evening, when I see my friends go out of this hall, to pass along the various railroads to their homes, I look upon them as if I were beholding them for the last time, unless I should see them as mangled corpses; and when I see them next morning, safe and sound, I feel as if I could congratulate them as much as if they had escaped unharmed from a field of battle.

Sir, in the insurance of men's lives, it has now become an important question, as to whether their business requires them to travel much on railroads or steam-boats.

And why should this be put into the Constitution? I suppose, Sir, for this reason: that the courts of law in Massachusetts have decided that, by the common law, if a man is injured on a railroad by having an arm or leg broken, he is entitled to a remedy; but, that if he is killed, no damage is done whatever. That is the rule of

law. The supreme court are called upon to construe all your laws. I am aware that there is a law providing a penalty of four or five thousand dollars for each passenger killed, and which is recoverable by indictment. That is a penalty in the nature of a punishment for an offence; but when you come to your civil suits, and produce your Bill of Rights, which says that every person is entitled to a remedy for injuries received, what is the principle? If a man is maimed, and he goes before a jury, that jury determines what the injury is, and award him damages accordingly. But if a man, on whose labor a wife and children depend for support, is killed at a blow, and his heir or administrator apply for damages, he is told by your courts that there was no injury, because he was killed outright, and all the damages that can be recovered would be for the suffering he endured, if you can prove it, for the few minutes which intervened between the time he received the blow and the time he ceased to breathe.

Gentlemen tell us that we may go to the legislature for the proper remedies. So you might, if your legislature was not, in great part, composed of men who are either directors or stockholders in most of these companies; but, if I judge rightly, this is a matter which is worthy of being put into your Constitution, that this great moloch may be properly restrained. Sir, it is shown by statistical returns, that more persons have been killed in the State of New York on railroads, in one year, than were killed on all the railroads in England in the same time; and, after having created these corporations, and invested them with this power, is it not worth while to put into the Constitution a principle that will protect the community against them? Your penalty for an offence is one thing, but your remedy for an injury received is another. That is what I wish to provide for. I have no feeling in regard to the matter, except a feeling of humanity and right.

I am in favor of this proposition, considering that when your Bill of Rights declares that there shall be a remedy for all injuries, that remedy should provide for the injuries sustained by women and children who may lose their husbands and fathers, and, in that loss, their means of livelihood. In recent cases tried by the supreme court, the question was, whether a party who was killed lived long enough to maintain a suit. If he did not, no remedy could be had, and especially where death was instantaneous. The court would not allow such cases to go to the jury. They took it away from the jury, on the ground that there was no surviving injury on which an administrator could take action.

Sir, I think that great danger may arise from this new element we have introduced into the business of life, unless it is guarded by proper restrictions. I think that when you incorporate a provision like this into your Constitution, you hold up, as it were, a beacon light to guard and protect human life; the attention of all parties will be called to it; and the result will be in renewed vigilance, and care, and caution, and the saving of human lives, and the preventing of that desolation of hearths and hearts which, in our recent experience, has been so fearfully extended. By this you will do as much real good, as by any other provision in your Constitution.

Mr. CADY, of Monson. It is quite immaterial with me, in what way, and by what means, this protection shall be afforded—whether by the organic law, the statute law, or by the common law. But that no protection in cases now before the Convention, is afforded, is true; but that is not all in relation to it. I hold that the eleventh article of the Bill of Rights, in the present Constitution, which contains this same principle, has not afforded any protection, either in this or other cases. I see no reason why, except that this article has never been heeded by the legislature, and they have never given that attention to it which is necessary to make it valid and effectual. And I see no reason why this resolution should be put in here, if no more attention is to be paid to it hereafter by the legislature, than has been paid to it heretofore; and if they should not, I would as lief see this provision struck out of the Constitution entirely. I can see no value in retaining an article in the Constitution, which has no effect, and is practically invalid. The present article says: "Every subject of the Commonwealth ought to find a certain remedy, by having a recourse to the laws for all injuries or wrongs which he may receive in his person, property, or character." I claim that no person has ever had a remedy for an injury which has caused death, as he had for wrongs to character or property. The article farther says: "He ought to obtain right and justice freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws."

Well, Sir, there are no laws except this very one, and this, so far as it may be construed as a law, might be considered as applying to all cases. But I suppose it is not to be considered as a law, but only as a principle upon which a law can be founded. Now, Sir, I contend that no person has ever had the benefit of the provision here made, or intended to be made, by this article of the Bill of Rights. A man can injure and wrong his fellow-citizen, and there is no remedy against him which can be applied. I can bring an action

against any man, or a rich man may bring an action against a poor man unable to defend his case, and there is nothing in the statute which prevents it. He makes him just as much expense, and as great a loss of time as he chooses and may cause delays—for these actions are not without delay—and just as much delay as the individual who is the oppressor, sees fit to make. In these cases of unjust prosecutions, where an innocent man has been seized by the arm of the law, and has been obliged to spend his time and money for his counsel and other things, although he may at length become released and establish his innocence, where is he? Being a poor man, he has expended all the means he has in his power to obtain, to pay his attorney and lawyer for his defence, and has spent his time, and what is the result? He has beggared his family, his children are naked, and his wife is in distressed circumstances.

Now, Sir, as I said before, I care not where the law comes from which affords this protection. If a provision of our Constitution cannot be made valid to afford this protection, I say I am in favor of striking it out. This provision is here in the Constitution for something, and the legislature heretofore have neglected to pay that attention to it which it really deserves. Now, I think that it is of vital importance to have such an article in the Constitution, but I think it is of much more importance that the article should be heeded. This neglect was not because it was an oversight. The legislature looked upon this article, and knew that it was there. They knew practically what had been done by previous legislatures. Still, from year to year, and year after year, a perfect neglect has been indulged in by legislative bodies, and they have neglected to afford that protection which this article in the Bill of Rights was intended to afford. There may be such a thing as an oversight, but this has not been one. When the mother of Achilles plunged her son into the river Styx, to render him invulnerable, there was an oversight on her part, because she forgot that the heel failed to be laved by the prophylactic waters. But not so in this case. The legislature have had their attention directed to this matter, but they have gone on, year after year, neglecting it, and we have no more protection than when it was first put into the Constitution in 1789.

Now, Sir, I am in favor of a resolution like the one offered by the gentleman for Wilbraham, (Mr. Hallett,) if it can be made effectual in any way. I am in favor of incorporating something like this into the Constitution.

Mr. DAVIS, of Plymouth. Owing to the lamentable circumstances to which the gentleman has alluded, I have hesitated to propose the motion which I shall offer before I sit down, until I could hear the gentleman for Wilbraham, (Mr. Hallett,) explain the reasons for his amendment. It seems to me that no good reason can be assigned why a provision providing only a simple remedy for an evil, for injuries, for trespasses, &c., should be put into the Constitution; and, especially, no good reason can be given why it should be put into the Bill of Rights. If it were proposed to put into the Constitution a provision, that for all injuries by tort, an action at law should lie, and that when such tortious injury resulted in death the action should survive, I could see some reason for the principle, but certainly none for such a provision as this. I understand that the liability, to some extent, is now perfect by the act of the legislature. And I also understand him to admit that the legislature have now full power to enact sufficient laws with regard to all remedies affecting the person, whether they result in death or not. If that be so, I see no reason why the provision should be placed in the Constitution or in the Bill of Rights. If gentlemen will look at this resolve as reported, it seems to me they will find that it is too vague and indefinite. In point of fact, nothing can be made of it whatever, and I ask gentlemen of the Convention, before they make up their minds upon this question, to read the provision. It is this: "Where *death* is caused through negligence or misconduct by means of railroads, steam-boats, or public conveyances for hire, the same remedies shall be open in a suit at law as for *like injuries* to the person resulting *in disability and not* in death." That is, "where death is caused," "the same remedies shall be open as for a like injury," namely, death "resulting in disability and not in death." Will gentlemen also ask themselves what that same remedy is which shall be open at suits at law for injuries resulting in disability and not in death. Does the Committee mean that the like rule of damages shall apply to injuries resulting in death, that apply now to injuries which do not result in death? Or does the Committee mean to say a jury shall be called upon, without any limit, to estimate, in broad terms, the value of life? What is the limit? It seems to me, that, if called upon as a juror, as perhaps I may be, to consider that question, I might say that the value of a man's life was a million of dollars, and this constitutional provision might require that of me; or else—for so I read this resolve—or else I should be called upon merely to decide that the party entitled to some remedy is entitled to the same remedy which he would be entitled to for an injury resulting in disability and not in death, no matter how small the damage may be. It seems to me there is this

inconsistency and this vagueness. I therefore move that this resolution be laid upon the table.

The question was taken, and the motion was agreed to.

So the resolve was laid upon the table.

*Law Martial.*

The PRESIDENT. The next matter in the Orders of the Day is the resolve upon the subject of the law martial. The question is to strike out of the twenty-eighth article of the Bill of Rights the words, "by authority of the legislature," so hat it shall read:—

No person can in any case be subjected to *law martial*, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service.

The question is upon the final passage.

Mr. DANA, for Manchester. I wish to know whether I can throw myself upon the indulgence of this Convention, for a few minutes, upon this subject. I will occupy but a few minutes, and will state but two propositions. Last night, when there was but just a quorum present, the resolve introduced by the gentleman for Wilbraham, (Mr. Hallett,) to deprive the legislature of the power of enacting the law martial, was passed. I think it was passed under a misapprehension. I have conversed with a number of gentlemen since last evening, and I have seen but one person to whom the subject has been presented, who has not changed his mind. If the Convention will give me attention for a moment, I will endeavor to satisfy them that the Constitution, since 1780, has been right in this respect, and that we had better let it alone.

The first question is, What is the law martial? and the second is, Who shall control it? First, what is the law martial? It is supposed by many that the law martial is just what a military man chooses to do. That is not so. It is a code of laws enacted by the legislature, and not what a military man chooses to do. First, we have the civil law, and, second, the law martial. They are both enacted by the legislature, and they are both controlled by the legislature.

Mr. HALLETT. Does the gentleman say there is a martial law in Massachusetts?

Mr. DANA. Certainly there is.

Mr. HALLETT. No, Sir; there is a military law.

Mr. DANA. The martial law of Massachusetts is in the Revised Statutes, and under that the courts martial are held. The law martial of the United States is in the laws of the United States, and under that the courts martial of the United States are held; and I think the gentleman for Wilbraham, (Mr. Hallett,) himself, has been a judge advocate of an United States court martial. The legislature of the State can control the law martial of the State; can alter it, and make it just as humane as they please. It is a system of laws executed by a military tribunal instead of by a civil tribunal. Those tribunals act according to law, by records, by proceeding in writing, and can punish no man except according to law. They cannot do as they please.

We have the civil law to apply to ordinary cases, but to whom does the martial law apply? It applies to military men, under arms. We try a militia man now, under martial law. At what other time does the military law apply? It applies when the civil law cannot apply; when, in times of insurrection and disturbance, you cannot control your jails, when you cannot control your court-houses, when the sheriffs cannot summon their juries, and courts cannot meet. When the civil law cannot go on, then the martial law is proclaimed. When the enemy is in possession of your strong-holds, when the milder processes of the civil law cannot go forward, then it is martial law or nothing. Well, then, the martial law is a law of the legislature, and which the legislature controls. When that state of things arises where the civil law cannot be put in force, then the legislature puts in force the martial law.

Then there remains but one question—who shall put in force the martial law? Shall it be proclaimed by the legislature, or shall it be proclaimed by any military man who chooses to do it? Our ancestors, in 1780, abundantly cautious of liberty, provided that only the legislature should proclaim the martial law. The gentleman for Wilbraham means to leave it so that any military commander that comes here, may proclaim the military law. He eulogizes General Jackson for putting New Orleans under military law. I think General Jackson was right in doing that. But I wish to know why, if it was right for General Jackson to do that, it is not right in the legislature to do it; why it is not better and safer in the hands of the legislature.

If the legislature of Louisiana had put New Orleans under martial law, it would have been far better than to have General Jackson do it. General Jackson had to assume the power to do it, and I think he did right; but if the legislature had declared the city to be under martial law, it would have saved him an assumption of power, and General Jackson, as a good citizen, would have rejoiced at it.

Now let us take a case nearer home. Suppose you pass this provision, and Massachusetts is

threatened to be invaded by an armed force. Your civil law cannot be enforced. A military commander comes and says, here are five thousand troops firing upon us. The people are in arms; there is no civil law that can be enforced; your wives and children cry to us for protection. Your sheriff is not strong enough to protect them; juries cannot be impanelled; courts cannot sit; and we must have a law. Well, Sir, what do we do? We say Massachusetts has provided for this great emergency. We have a martial law. Let military courts proceed where civil courts cannot. We therefore go to the legislature, and ask them to proclaim martial law for that part of the Commonwealth where civil law will not apply. And what does the legislature say? They say: "We had the power to do what you ask us to do up to 1853, when a Convention was held to revise the Constitution. It was composed of very good, very wise and excellent men, but they were under the impression that there ought not to be martial law, and they have taken away the power of proclaiming it." And then the legislature of Massachusetts will go down upon its knees to this military commander, and beg him to enforce that martial law which they have not the power to proclaim. They will surrender up to this one man, despot though he may be, all the power they possess, and allow him to exercise it without the power of controlling him, because this Convention has said that in no case shall the legislature proclaim martial law.

Now the question is not whether we shall have martial law or not, for that we shall have, if the case should ever arise when it should be needed; but the question is, whether we shall allow a military chieftain, who may come here, to assume that power for himself, without the power of the legislature, or of any civil tribunal to control him, or whether it shall be left in the power of the legislature to proclaim it when it shall appear that the civil law cannot be exercised? Shall we leave it to them, or shall we place ourselves in the mortifying condition of forcing a military hero to assume the power, in an emergency, because we have unwisely tied our hands in a period of peace?

Mr. HALLETT, for Wilbraham. As the gentleman for Manchester had leave to state his view of this question, and as I think he has stated it not in accordance with the law or the facts of the case, I ask the indulgence of the Convention to say a few words in reply, and promise that I will detain them but a moment.

If I understand the point made by the gentleman, he assumes that "*military* law" is "*martial* law." Now, Sir, martial law is not military law, and I am sure that the gentleman cannot undertake to assert it, from any authority he can produce. I can only attribute his error to his not having looked into the matter. I presume that Blackstone was not before him, or the opinion of Judge Woodbury, when he made that assertion. Sir, I repeat, martial law is not military law. You cannot find any *martial* law upon the statute books. Martial law is the absence of all law. It can only be proclaimed when the laws which the legislature has established cannot be enforced. I read from Judge Woodbury's opinion, as given in the 7th volume of Howard's Reports, in the Rhode Island causes. The question there was, whether martial law could be proclaimed by a legislature. The learned judge says:—

"The present laws for the government of the military in England, do not exist in the vague and general form of *martial* law, but are explicitly restricted to the military, and are allowed as to them only to prevent desertion and mutiny, and to preserve good discipline. So in this country, legislation as to the military is usually confined to the general government, where the great powers of war and peace reside; and hence, under these powers, congress, by the Act of 1806, has created the Articles of War 'by which the armies of the United States shall be governed,' and the militia, when in actual service, and only they. To show that this is not the law by which *other* than those armies shall be governed, it has been found necessary, in order to include merely the drivers or artificers 'in the service,' and the militia, after *mustered* into it, to have special statutory sections. Till mustered together, even the militia are not subject to *martial* law. And whenever an attempt is made to embrace others in its operation, not belonging to the military or the militia, nor having ever agreed to the rules of the service, well may they say, we have not entered into such bonds—*in hæc vincula non vexi*. Well may they exclaim, as in *Magna Charta*, that 'no freeman shall be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land.'"

Again he says:—

"So it is a settled principle even in England, that 'under the British Constitution, the military law does in no respect either supersede or interfere with the civil law of the realm;' and that 'the former is in general subordinate to the latter.'"

Now there is the rule of law, and the clear distinction between military law and law martial. I do not suppose that the gentleman for Manchester intentionally misstated the point; but I must say that, as a lawyer, he stated it very disingenuously. Now I ask, will the gentleman contend that military law should supersede the civil law?

Mr. DANA. I said nothing of that sort.

Mr. HALLETT. The gentleman said that *martial* law existed in our statute books, and that when the civil law could not be carried out it should be superseded by martial law. If he is correct, it follows that military law may supersede civil law whenever the legislature choose to say so. Now, Sir, I repeat that *military* law and *martial* law are not the same thing, and that there is no martial law in the statute book. The gentleman alluded to a court-martial, and to a judge advocate. Why, Sir, there are no judge advocates under martial law. No, Sir; if the gentleman had ever looked into any book upon martial law or upon military law concerning a court-martial, he would have known the distinction. There is no trial under martial law. There is no judge advocate. It is the drum-head and the platoon.

Mr. DANA. Does the gentleman mean to say that the legislature has no right to control martial law or to enact it?

Mr. HALLETT. Yes, Sir. The legislature can only declare martial law, or enact that certain persons, or the whole people, shall be put under martial law. They cannot alter martial law, nor decree what it is. The case for declaring that martial martial law exists, can arise only when the legislature, as it did in Rhode Island, shall declare the whole State to be under martial law. In other words, an abrogation of all law. The legislature of Massachusetts could not declare one portion of the Commonwealth under martial law and the other under civil law, during a campaign. They could not declare one town under martial law and another under civil law.

Mr. DANA. The gentleman has not answered my question. I ask him whether he means to deny that the martial law is under the control of the legislature, and whether they have not the right to make laws regulating it?

Mr. HALLETT. That is the point I was explaining. No, Sir; the legislature cannot make martial law or control it, because they have no power to enact in detail a code of law which abrogates civil law. They have no authority whatever, except that contained in this provision in the Bill of Rights, which is just this, as it stands in the present Constitution:—

"No person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by the authority of the legislature."

There is the authority which is to declare martial law, or to subject persons to martial law; not to make or modify martial law. Now the gentleman says the legislature ought to have authority to put any man, or the whole State, under martial law. Do you mean to give the legislature that power? Do you mean, when you come here to propose to the people a Constitution which prescribes and limits the legislature, to say that the legislature shall have power to abrogate even the Constitution itself, whenever they shall think proper? Do you mean to give them the authority to point to this man, or that man, and say he shall be put under martial law, without any protection of his rights by civil law? What is the use of your Bill of Rights? What is the use of anything in your Constitution with that provision which makes the legislature as lawless as a Roman Dictator?

Now instead of that, it is proposed to take this power away from the legislature and provide that no person shall be subjected to law martial except those engaged in the army and navy, and except the militia in actual service. That is the law martial of the camp, which follows the army wherever it goes, and that is all the law martial which any republican Constitution, made since the Revolution, ought to provide for, and it is all the martial law I hope this Convention will consent to.

To settle this matter of definition, I will read a short extract from 4 Blackstone's Commentaries, concerning martial law. He says:—

"Martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as Sir Matthew Hale observes, *in truth and reality no law, but something indulged in rather than allowed as a law.* The necessity of order and discipline in an army, is the only thing which can give it countenance."

Mr. BIRD, of Walpole. I have but a single word to say, and that is this: I hold that those who are opposed to the passage of this resolve, must show that there is a necessity for conferring upon the State authorities this power to declare martial law.

Mr. DANA. We have always had it.

Mr. BIRD. There may have been a necessity for it when this Constitution was formed, for we had not then tried the experiment of self-government. It was then a very doubtful experiment, and it is easy to believe that it may have been wise then to put such a provision into the Constitution. But before gentlemen can with good reason call upon me to vote for continuing this power, they must show that the power is necessary in this year of grace, 1853. Sir, I do not believe it. It may have been considered necessary, or because it may have been really necessary in 1780, it does not follow that it should be continued now when that necessity has passed away.

Mr. SCHOULER. Suppose it should be necessary fifty years hence?

Mr. BIRD. It has not been necessary for fifty years past, and I believe the world is growing better instead of growing worse, and therefore it will be no more necessary fifty years hence than it is now.

Now, I must first be satisfied that any conceivable case can ever arise in Massachusetts where it will be necessary for the State authorities to proclaim martial law, before I will ever vote to confer such a monstrous power upon the legislature.

But there is another question which may very well be asked—whether the State of Massachusetts has, or has ever had since the adoption of the Federal Constitution, the power under any circumstances, to proclaim martial law? I think it would not be very difficult to show that Massachusetts has given to the federal government the entire control of this matter. By the Constitution of the United States, any individual State has no right to declare war, and martial law can only be declared in a state of war. We might find ourselves in a state of insurrection under circumstances when it would be justifiable to declare martial law; but even then it could be done by State authorities only, against law.

But, waiving this question, I do not believe any emergency will ever arise within the borders of the State of Massachusetts, where it would be advisable to confer upon the legislature the power to declare martial law. I do not believe such a state of circumstances is possible in the nature of things, in the next fifty years. I do not believe any person upon this floor will rise here and say he seriously believes that any emergency will ever arise in Massachusetts which may not be safely controlled by the civil authorities. Then where is the necessity or propriety of conferring such a power upon the legislature when we can hardly conceive of an instance in which it would be proper to use it? I hope the proposition before the Convention will be adopted.

Mr. CHURCHILL, of Milton. It seems to me that if we are to adjourn on Saturday, the debate upon this particular topic has been prolonged as far as is necessary. It seems to me that a power that has existed so in the Constitution without any harm coming from it, may very safely be trusted there in future. At the same time, I believe some great emergency may arise in the future, when such a power would be necessary. I therefore move to lay the whole subject on the table.

Mr. BIRD. Upon that motion, I ask for the yeas and nays.

The yeas and nays were not ordered, 25 voting in the affirmative, and 104 in the negative.

The question upon Mr. Churchill's motion was then taken, and agreed to—ayes, 70; noes, 67.

So the whole subject was laid upon the table.

Mr. FRENCH, of New Bedford. I move a reconsideration of the last vote, that the subject may go among the Orders of the Day for to-morrow.

The PRESIDENT. At the present time, the Orders of the Day are under consideration. The next order is the document on the Bill of Rights. The question is on its final passage.

Mr. MOREY, of Boston. I move that the Convention do now adjourn.

The question was taken, and on a division there were—ayes, 65; noes, 93.

So the Convention refused to adjourn.

Mr. BRIGGS, of Pittsfield. I wish to inquire whether the yeas and nays have been ordered on the amendments to the Bill of Rights? It seems to me, that if they have not, we ought not to take the question now, on such a subject.

Mr. SUMNER, for Marshfield. There has been no vote to take the yeas and nays on this proposition.

Mr. BRIGGS. Then I think we ought not to act upon it now, with a house consisting of scarcely a quorum.

The PRESIDENT. The question is on the final passage of the resolves.

Mr. SCHOULER, of Boston. As I wish to move an amendment to that Report, of which I gave notice last night, I hope the Orders of the Day may be laid on the table; and I make that motion, that they lie on the table.

The motion was agreed to.

Mr. SCHOULER. I move that the Convention adjourn.

The question being taken, on a division there were—ayes, 83; noes, 44.

So the Convention adjourned until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

Mr. BROWN, of Medway. I voted this forenoon, under a misapprehension, on the subject of the rights of the jury. That vote does not express my real views, and I wish to have it changed, so that it may be recorded yes, instead of no, on that question, if it is consistent with the rules to do so.

The PRESIDENT. The subject having passed in Convention, it is not competent for the gentleman to change his vote at this time.

Mr. WILSON, of Natick. I move to take

from the table the resolutions in relation to future amendments of the Constitution. I wish to have the subject placed in the Orders of the Day.

The motion was agreed to.

Mr. WILSON. For the purpose of saving time, I move to suspend the rules for the purpose of having this subject placed in the Orders of the Day, for to-day.

The motion to suspend the rules was agreed to, and the resolutions were placed in the Orders of the Day.

*Sectarian Schools.*

Mr. PARKER, of Cambridge. I move now to take from the table the subjects contained in Documents Nos. 11 and 16 of the calendar, relating to schools and school moneys. I do not wish to consume the time of the Convention by any remarks; but I must regard a refusal to take them up, as a refusal to act upon them at all.

The motion to take them up, and proceed to their consideration, was agreed to.

The question was on the second reading of the following resolve:—

*Resolved*, That it is expedient so to amend the Constitution, 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.

Mr. PARKER. I move to amend the resolution of the Committee, by striking out all after the word "Resolved," and inserting the resolve contained in Document No. 123, which is as follows:—

That 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.

I do not wish to detain the Convention a moment with this subject. This amendment has been prepared on consultation with divers gentlemen; and it is one which, I suppose, will meet the approbation of the Convention, and may be adopted without debate; and unless some gentleman objects to it, I shall take no time in explaining it now.

The question was then taken on the adoption of the amendment, and it was decided in the affirmative.

The question recurred on the final passage of the resolution as amended, and it was passed.

*Special Assignment.*

Mr. MORTON, of Taunton. There is a subject before the Convention of some considerable interest, upon an amendment which I had the honor to offer to the resolution in relation to representatives. At the request of certain individuals who were not satisfied with my amendment, I withdrew it a fortnight ago, and submitted it as an independent proposition. For the accommodation of gentlemen who wished to press forward other business, I omitted to call it up until now. I find that gentlemen are anxious to close their labors here, and that there are other propositions which they wish to have acted upon at present; and I have agreed to move that the Committee be discharged from its consideration, so that there may be a special assignment for it to-morrow, at an early hour. It will be necessary, in order to accomplish it, that there should be a motion to suspend the rules for the purpose of discharging the Committee.

The motion to discharge the Committee from the consideration of the resolution, was agreed to.

Mr. MORTON. I move that the rules be suspended, so that the subject may be considered in Convention.

The motion was agreed to.

Mr. MORTON. I now move that it be specially assigned as the subject for consideration at ten o'clock, to-morrow.

Mr. HUNTINGTON, of Northampton. It seems to me this question is closely connected with another question which remains to be settled yet; and that is, as to the mode in which these amendments are to be submitted to the people. If these amendments are to go before the people as a whole, under the form of a revised Constitution, I do not see how this can be adopted; and I think that until that question is settled, it should not be discussed. I object to having it made a special assignment for to-morrow morning at ten o'clock, until the other question is settled. It seems to me we shall only get ourselves into embarrassment, and consume time to no purpose, by taking up this subject, until we have settled the other question.

Mr. MORTON. I make this motion under somewhat peculiar circumstances; and if it is debatable, I should like to give the reasons why I claim to have it assigned for consideration to-morrow at ten o'clock.

The PRESIDENT. It is debatable to that extent.

Mr. MORTON. It will be recollected that this proposition was submitted more than two weeks ago, as an amendment to the resolves in relation to representation. At the request of certain individuals who were in favor of this proposition, and upon the assurance that it should have an early consideration, I withdrew it as an amendment. I did not wish to press it upon the Convention, nor to surprise them with it at any time, and concluded to offer it as an independent proposition. Various subjects have come up, and it has been postponed from time to time, at the request of gentlemen who had some object which they wished to have acted upon, until the present time. I think that, under the circumstances, I have a strong claim to have it considered by the Convention at an hour when they can have an opportunity to consider it. I therefore desire that an early hour may be fixed for its consideration to-morrow.

So far as the objection goes, I think it should not prevail, because the gentleman may have as much of an opportunity to discuss it under this, as under the independent proposition; and therefore, I hope that, under the peculiar circumstances, the Convention will do me the favor, I may say the justice, to make the special assignment. It is obvious, and we all rejoice at it, that this Convention is about to draw to a close; and unless this proposition, which is a pretty important one, is considered early to-morrow forenoon, there will no proper opportunity to consider it at the present session of the Convention.

Mr. WILSON, of Natick. I wish to say but a single word in relation to this matter. I hope it will be specially assigned for to-morrow, and if at that time it is not best to consider it then, if other things come up, it can be deferred for a short time. We have several subjects which it is necessary to dispose of this afternoon, and I hope the gentleman from Northampton will not object to it.

Mr. HUNTINGTON, of Northampton. I have no objection to that time, if we can save time by it; but the other question in relation to the mode of submitting the amendments to the people, has got to be discussed when it is brought before the Convention by the Committee who are to report upon that subject. If you assign this subject for to-morrow morning at ten o'clock, it will be discussed then, and you will inevitably have another discussion on it when the Committee report; and thus you will consume double the time that is necessary. It appears to me, that in discussing the main question, this will also be brought in and discussed incidentally. The gentleman from Natick seems to suppose, that unless this is specially assigned for some future time, it necessarily comes up now; but that is not so. If it is not assigned for to-morrow morning, it may go over, and if the gentleman from Taunton will assign it for the same time that the other question is to be discussed, I think we shall save time by so doing; as the two subjects are connected, let them be discussed together. I do not see why the gentleman cannot modify his motion, so as to have this assigned for the same time that the other subject is taken up. If he will make that motion, I will vote for it.

Mr. EARLE. I think if this subject is first discussed, it will do very much towards enabling us to come to a proper result in relation to the other question. I think that that question cannot be settled before, so well as it can be after this is determined. When this comes to be discussed, it will probably lead to other propositions, and I think it should be disposed of before the other subject is taken up. For these reasons, I am in favor of the motion of the gentleman from Taunton, and hope this subject will be assigned for to-morrow morning.

Mr. SCHOULER, of Boston. I have been trying for the last fortnight to discover some insuperable objection to having this alternative proposition taken up. Gentlemen who have spoken to me about it, have told me that it was not possible to dispose of that subject now, and I understand the gentleman from Northampton, to consider it impossible. If we decide that the Constitution shall go out as a whole, with the exception of this representative question, I understand him to argue that it will be impossible to send out an alternative proposition with regard to the basis of representation. There must be some objection that I have not thought of nor heard of; for really, I cannot conceive of any. Supposing we do decide that the Constitution shall go out to the people as a whole, still I can conceive of no objection to having this part considered separately. We may, for instance, place in the Constitution, the system of town representation that has been adopted by the Committee and the Convention; and at the same time we can send out to the people the other proposition for them to vote on, and provide, that if the district system receives the largest number of votes, that shall be inserted into the Constitution in place of the other. I can think of no difficulty about arranging that matter. I think I can frame a proposition in five minutes, that will put the matter just right, unless there is some objection which has not yet been advanced. I am in favor of the gentleman's proposition, that we shall take up the subject to-morrow morning at ten o'clock, and decide whether we are to submit anything to the

people besides the system of town representation which has been adopted. It has been intimated that there is a compromise proposition to be offered, that will, perhaps, reconcile all differences. I think if this matter is taken up to-morrow morning, there will be an advantage in having an early decision of the question, in order that the Committee who are to prepare and write out the amendments to the Constitution, may be enabled to govern themselves accordingly. For these reasons, I am in favor of the special assignment proposed by the gentleman from Taunton.

Mr. EAMES, of Washington. I am in favor of the assignment for to-morrow morning, for I am willing to give the gentleman from Taunton time to have the matter discussed; but, for the purpose of putting an end to this preliminary debate, which accomplishes nothing, and in order to enable us to get home to our constituents some time or other, I now move the previous question.

The previous question was ordered.

The question being then taken on the motion of Mr. Morton, it was agreed to.

*Leave of Absence.*

The PRESIDENT. The Chair has received a communication from Mr. Huntington, member of the Convention for Becket, stating that in consequence of a death in his family, he is obliged to ask leave of absence until the close of the session of the Convention.

On motion by Mr. EAMES, leave of absence was granted.

*Sectarian Schools.*

Mr. WHITE, of Quincy, moved to reconsider the vote by which the resolve on the subject of appropriations for sectarian schools was passed; and upon that motion he asked the yeas and nays.

The motion was placed in the Orders of the Day for to-morrow.

*Bill of Rights.*

Mr. WILSON, of Natick, moved that the Convention proceed to the consideration of the resolves from the Committee on the Bill of Rights.

The motion was agreed to; and the resolves having been read a second time, the question was stated on their final passage.

Mr. HALLETT, for Wilbraham, moved to strike out the following words, being the same that had been inserted on the motion of Mr. Dana:—

"Said writ shall be granted, as of right, in all cases where the legislature shall not specially confer discretion therein upon the court; but the legislature may prescribe preliminary proceedings to the obtaining of said writ."

Mr. HALLETT. Mr. President: This is a wholly new question, and I wish gentlemen to be apprised of its importance. The insertion of this provision in our Constitution, may bring the United States and the State into direct conflict. This provision may authorize any person to take out of the custody of any United States officer, any one whom he has in trust upon a criminal or civil process. The result of it is, you compel your State courts to issue a writ of *habeas corpus*, and one of your constables or sheriffs goes to the marshal to execute it, who must either resist it, or be liable to a penalty if he allows it to be carried into effect. If the marshal resists, the United States forces will be called out, and he will be sustained by the United States law. He would call on his *posse comitatus*, and if the governor happens to be on his side, he would have the military ordered out to assist him, and you would have war immediately. If this Convention desire to have a war, they must find means to carry it on. Now, Sir, I object to throwing any such firebrand as this into the Constitution. I hope we shall leave this matter where we found it; for if we are going to have war, I want to know what your martial law is going to be.

Mr. DANA, for Manchester. Will the gentleman allow me to ask him wherein my provisions differ from a law in the Revised Statutes, which has been in force ever since 1822?

Mr. HALLETT. I will tell the gentleman that there is a difference in one important point. The gentleman wants to carry his particular cases. He accused me of bringing some matters into the Constitution, for which he said I desired to make constitutional provisions because I had lost cases; but the gentleman also lost a case, and he has got his hobby here that he proposes to ride through the Convention. I hope the Convention will not allow him to ride it in peace.

Mr. DANA. That is not my question.

Mr. HALLETT. I was going to answer the gentleman's question, if he will let me take my time for it. The gentleman asks in what respect this provision that he proposes to introduce into the Constitution, is different from a law now in force. I will tell him. By the present existing law, the judge determines, upon the presentation of a petition and the evidence, whether he will issue the writ of *habeas corpus* or not. In the case where a person is held by a criminal process, if he determines that that legal process is a valid process, he does not issue a writ of *habeas*

*corpus*. Now the gentleman insists that if you go before the judge and apply for the writ of *habeas corpus*, on the very civil process under which the marshal holds the individual, although the judge thinks that is valid, nevertheless he must issue the writ of *habeas corpus*. Then you have the whole State on the one hand to put down, and the whole United States on the other hand to be put down; and the question is, who can fend off the hardest?

Mr. KEYES, for Abington. I have been quite concerned the last three or four weeks, in consequence of not having heard anything said about saving the Union. I think it has not been saved for at least three weeks. [Laughter.] Since we have heard these patriotic speeches on the subject, however, I feel somewhat inspired with a hope that we shall not go to pieces before to-morrow morning, now that the subject has been taken up. Now, Sir, I take it that the meaning, if there is any meaning at all in this matter, is to extend and to render more secure the right of *habeas corpus* in Massachusetts, to individuals. If this is the tendency of it, I suppose it will be adopted. There is a small class of people here in Massachusetts, who have undertaken to save the Union by making us all negro-catchers—nothing else; and, I trust, whatever this Convention may do, that it will not degrade itself by following any such lead as that. Yes, Sir; there are a set of men here in Massachusetts, who, for the last two or three years have taken it upon themselves to save the Union by making the people negro-catchers—the miserable serfs of negro-drivers; and Henry Clay says that even throughout the South, they are a tabooed and contemptible set—tabooed from all civilized people, and from the society of gentlemen. If that class of men are satisfied to become negro-catchers; if they choose to become these abandoned wretches that are despised by all gentlemen, then I am content that they should do so, and will not undertake to interfere with them at all; but when they undertake to make me a negro-catcher, I am not content, for I regard it as a personal insult, which I shall take every occasion, and every justifiable means to resent. I say that this class of men are despised by the human race, as they ought to be. But if this matter is to be argued seriously—and I do not believe that there is any need for it—take the case that the gentleman for Wilbraham, (Mr. Hallett,) has said may occur in Massachusetts. A case of the kind has just occurred in Pennsylvania; and, Sir, the State of Pennsylvania does not rank itself anywhere beside Massachusetts on these questions of liberty. But a case of that sort has arisen in Pennsylvania, and the marshal of the United States, armed with those infamous powers which are conferred by the federal government, but which conflict with the laws of the State of Pennsylvania, has been arrested and imprisoned in that State. Sir, look round on these walls; look up into the sky; look at Washington, and everywhere else; and all that you ever knew about the Union is just as perfect as before that event happened. Yes, Sir, this fugitive slave was taken out of the hands and the custody of the marshal of the United States, by the State of Pennsylvania, and when the marshal refused to give him up, he himself was imprisoned. How different, Sir, are our proceedings in our courts in Massachusetts! When an application was made on behalf of the State of Massachusetts, to the United States marshal of this district, in a similar case, he set your application and your laws alike at defiance. The officers of the United States spit in the face of Massachusetts; and instead of that opposition which should have come from brave men, there was a whining sycophancy, a cowardly cringing to the South, which has had no example since the days of the Revolution; and the men who indorse this foul cowardice, are the only men who are called national Democrats or national Whigs. [Laughter.] Sir, according to the definition the national Democrats have given themselves, they are unlineal and bastard Democrats. [Renewed laughter.] What idea have they of the doctrines of their great founder, whose name they take upon their lips, but whose doctrines they every hour trample in the dust? I take it, Sir, that Pennsylvania has set an example which Massachusetts may follow; that of this idea of danger to the Union, and this conflict with the government of the United States, with which men, for their own base purposes, have endeavored to frighten the people of Massachusetts, we have now had an example, and we now see to what it amounts. When Pennsylvania, or any other State demands, and insists upon its just rights, those rights will be granted; and that too, without danger to the Union; but if we lay down on our faces, dust-licking, they trample upon us, as they ought to do, and as we deserve to be trampled upon. We ask for nothing but our just rights and liberties; and if we ask for them like bold, brave, and just men, we shall get them without much trouble. It is because we have a pack of men in this Commonwealth, and scattered all over the country for political purposes, to show that they are national men, and who are forever with their mouths in the dust, that has brought all this evil upon us. Let us assert the dignity of Massachusetts, and submit to this thing no longer. Let us show, that while we re-

gard the government of the United States, we are not to neglect the interests and rights of the State and the people of Massachusetts. Let the people of the New England and the Free States but say the word once, and all difficulties and collisions between the South and the North will end at once. Southern men are gentlemen; Southern men are brave, and therefore I am willing to trust them. It is not the slave-holder, born on the Savannah——

The PRESIDENT. The Chair must remind the gentleman for Abington, that he is passing beyond the subject before the Convention.

Mr. KEYES. I was not aware of it. I thought I was talking about the amendment. The amendment, if I understand it, is for securing the writ of *habeas corpus*, or rather for extending the power of that writ in the State; and, Sir, I maintain that it is good for nothing, unless it applies to this matter of the fugitive slave law. It is scarcely ever needed under any other circumstances, and those difficulties between the North and the South are what make this amendment necessary.

But, Sir, I do not seriously intend to argue this amendment; because, if the Convention regard the amendment on grounds like that, if the people of Massachusetts did not hiss at the whole of it at once, we are not worthy of having a Constitution at all. [Laughter.] They will do it; and I hold it to be a duty which I owe to my constituents, and to myself, as well as to the people of Massachusetts, to do everything in my power to prevent the execution of this abominable law; and any man who extends the powers of that law, I hold does me a personal injury, and offers me a personal affront, and I hold him responsible to me; and I shall never neglect an opportunity of resisting such an affront whenever it is offered.

Mr. DANA, for Manchester. The member for Wilbraham, in his very natural excitement, fearing the Union to be in danger, is not in so perfectly calm a state of mind as is desirable for the investigation of a question of law. This is a pure question of law; and were it not that he is impressed by this feeling of great alarm, he would see at once, that what I propose has no harm in it. The Revised Statutes have provided, since 1836, and the old law provided since 1822, that every person restrained of his liberty, by any other person or persons, may prosecute a writ of *habeas corpus*, according to the provisions of the statute. Now, if that does take a slave out of the custody of his master, we cannot help it; it is the law, and it must be enforced when necessity arises.

"Every person imprisoned in any common jail, or otherwise restrained of his liberty, by any officer or other person, except in the cases mentioned in the following section, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful."

He shall "prosecute the writ" and "obtain relief," if the restraint shall prove to be "unlawful." Now, that is perfectly plain. He is entitled to his writ, and then, upon that writ, is to be determined the question of the lawfulness or unlawfulness of the detention or restraint. If the detention proves to be lawful, he is not relieved; if unlawful, then he is relieved. I cannot see how any person can be afraid of such a law as that.

The second section describes persons who shall not, as a matter of right, be entitled to this writ; meaning, thereby, that all others, with these exceptions, shall be entitled to it as a matter of right. "Every person," with certain exceptions, "may prosecute a writ of *habeas corpus*." And what are the exceptions? Persons convicted for treason or felony; persons convicted or in execution upon legal process; and persons committed on *mesne process*. These shall not have the writ as a matter of right, but the issuing of it shall be left to the discretion of the court. In these three classes of cases it is not proper that persons should be taken out of the custody of an officer upon the petition of every-body who asks for it, because they are in a public jail, in the custody of a public officer, and ordinarily in no peril. The court will hear the question upon petition before they will decide as to granting the writ. But all other persons, except these, shall have the writ as a matter of right. Why? Because they may not be in legal custody; and in such case they ought to be brought into court, and not held at the mercy of persons who may choose to detain them. That has always been the statute law of Massachusetts—that these three classes who are here enumerated, shall not have this writ as a matter of right, but that all others shall.

Then, the statute says that application shall be made to the court in writing, setting forth the name of the party for whose relief the writ is intended, the place where the party is imprisoned, the pretence for the imprisonment or restraint, and if there is any warrant or other process, a copy is to be annexed, or evidence given that it has been demanded and refused; and finally, the facts set forth in the complaint shall be verified by the oath of the person making the application.

Then, the fourth section provides that the court or magistrate, "*shall*, without delay, award this writ of *habeas corpus*." It does not say that they may or may not issue this writ, as they please,

but that they "*shall*, without delay, award and issue a writ of *habeas corpus*." My amendment, therefore, does not differ from the Revised Statutes and the law, as it has been in operation since 1822. It simply proposes to put this matter into the Constitution, where it cannot be changed by the legislature, or evaded by the court. The writ is to be granted in all cases where there is not a discretion specifically vested. At present, the discretion is limited to three classes of cases. The legislature may, if it chooses, add to these classes all persons held under charge of being fugitive slaves, and relieve the mind of the gentleman for Wilbraham. There is nothing to prevent the legislature, if they please, from adding that class. I saw a report of a case this morning, in a Pennsylvania paper, in which application was made for this writ, in behalf of a fugitive slave. The United States marshal, in whose custody the fugitive slave was, refused to deliver him up to the sheriff, and the consequence was, that the marshal was arrested. A return was then duly made to the writ; and, upon a hearing of the case, the fugitive was remanded into the custody of the marshal. The only question was, whether the hearing should be upon the writ, or without the writ. The great security has always been, that it should be upon the writ; and the object, is that the court may see the parties before them, that they may see the original process, and not be obliged to depend upon copies, or upon any man's word; and above all, that there may be no danger of the party being spirited away before a decision. As Judge Kane, in the Pennsylvania case said, he could not trust to the word of the marshal, that he would not carry the fugitive off beyond the jurisdiction of Pennsylvania. Now, if the court is first to give a hearing on petition, before the writ is granted, the respondent might, in the mean time, carry the man away, which he could not do, the writ being granted, and the parties all in court. The great purpose of the writ of *habeas corpus* is not to have a decision of a court as to whether a man may be carried off, but to prevent his being carried off until it is first determined whether he is in lawful custody. For a mere decision, any other action may do as well. The party is to be brought into court, so that he cannot be carried away. You may issue an injunction, to say that a man shall not carry another away; but what is the use of your injunction? He may get beyond your jurisdiction. The writ of *habeas corpus* seizes all the parties, so that from that moment no damage can be done until the question on the writ is decided.

In these remarks, I have alluded to the case of a fugitive slave; for it is in respect to them only, I believe, that any objection is offered to my amendment. If on the return of the writ, it is decided that the master has a right to the slave, he will get him; or if it is decided that the marshal should detain him, he will, of course, have the right to do so. This was the course pursued by Judge Woodbury, in the case of Sims. He issued the writ, and heard the case on the return, with all parties before him. I cannot conceive any objection that there can be to the issuing of the writ, unless it be that it prevents the chance the claimant has of getting his man out of the State before a legal decision can be had.

I believe, Sir, that I am one of the last persons who will be accused of bringing forward radical measures in matters of law. On the contrary, I have maintained conservative measures in this Convention to the extent my influence would reach, and perhaps beyond it. On this point, I merely wish to place in the Constitution what is now, and always has been, the statute law. I desire to do this, because there is now a disposition on the part of the courts to assume the right of discretion in all cases. In the case of Thomas Sims, the supreme court said that they had discretion in all cases on the petition. The hearing might occupy a day or two, or three, or even a week, without ever getting the parties before them; and hence, by the time that a decision was obtained, a man might be a week's journey out of the State. I do not believe that the courts have a right to exercise such a discretion, and I want the Constitution to say that they shall not exercise it, except in such cases as the legislature may specially authorize. The gentleman for Wilbraham, (Mr. Hallett,) in his zeal to prevent collision with the United States, ought to recollect that the same privilege he is so zealous to give to the master in favor of his slave, may do great wrong to many innocent persons, who ought to have the benefit of that writ. There are other persons besides slaves who want the benefit of the writ of *habeas corpus*. And I beg gentlemen in their zeal for the recovery of slaves, not to put into the hands of the master a power which others may exercise to the oppression of the weak.

Mr. HALLETT, for Wibraham. The gentleman for Manchester sometimes reminds me of the one idea concentrated so touchingly in the sentimental writings of Sterne, which describes an enthusiast looking through the door of a prison grate, and seeing nothing but a slave with the iron entering his soul. That gentleman, upon some subjects which he discusses, does the same, and can see nothing but the slave and the slaveholder. I trust my mind is a little broader than that. I have not thought of that in connec-

tion with so great a personal right as the *habeas corpus*.

Mr. DANA. I ask the gentleman whether I ever brought up the subject of the fugitive slave law in debate, except in answer to him?

Mr. HALLETT. The gentleman has brought it up here in this proposition; he brought it before the Committee on the Bill of Rights, where it was voted down; then he comes here and renews the issue. Now, Sir, it is not solely on the ground that this amendment may be designed to obstruct the execution of the fugitive law that I oppose it, but because the gentleman in his zeal to cover that case, is endangering the benefit of the writ of *habeas corpus*. It relates to all our laws, and to the personal rights of all citizens. Just examine it. The present provision in the Constitution in regard to the writ of *habeas corpus*, is this:—

"The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth *in the most free, easy, cheap, expeditious and ample manner.*"

Can you add anything more to that? It "shall be enjoyed in the most free, most easy, most expeditious, and most ample manner!" The gentleman says that is not enough. He wants something more. But to get that more he puts this great right at the mercy of a legislature. If he wants anything more than the Constitution now gives, of the freest and cheapest claim to this writ in all cases, it seems to me that he can only want some provision by which, under color of its being an amendment to the common law right of *habeas corpus*, some law may be violated, or the State and the United States be brought in conflict.

Sir, instead of securing liberty, it may authorize any man, under color of this new *habeas corpus*, to take any man or woman out of their house or bed, and drag them before a magistrate; or kidnap them while on the way; or, by bribing the officer who executes this writ, to be granted to anybody who asks for it. That is the practical effect of requiring such a writ in all cases. What does the gentleman intend by it? He is perfectly frank upon that point. He intends by it to compel any judge to deliver a writ of *habeas corpus* to any person who asks for it. Suppose a case in which a person is held by the United States marshal under civil process. What would the gentleman do? He goes to a judge of the State court and applies for a writ of *habeas corpus*. Why, says the judge, the marshal has got the man for debt, under legal process, and what is the use of issuing a *habeas corpus?* Nevertheless, he replies, I want the man here, I want to do something for him, and must have a writ. The law, if this provision prevails, can give the judge no discretion, and he must issue the writ. Then comes the conflict of State and United States officers. The party must be brought before the judge, if the marshal will allow it; and if the prisoner can be rescued on the way, very well. That may be one object. Just so if the marshal has a pirate in custody, and his comrades, or any class of philanthropists, opposed to hanging, desire to have him rescued; they go to a judge, and the judge must issue a writ of *habeas corpus;* and, in the meantime, the crew, or the sympathizers, are ready to rush to his rescue as soon as the marshal undertakes to bring him before the judge. The legal process goes for nothing, which holds any person in custody, for this provision in the Constitution will supersede all existing statute law. I ask the gentleman one thing; the moment this is adopted into the Constitution, what becomes of your statute law? It is repealed. Which is the higher law? The Constitution. If anything in the Constitution is in conflict with the State law, the Constitution repeals that. This amendment, therefore, will repeal that provision in the existing law. To whom does that provision in the existing law deny the right of the writ of *habeas corpus?* To persons in prison for felony, and persons in execution on civil process. The present proposition is, that the writ shall no longer be denied to them. And worse than that, the legislature are to have control over this great writ of personal right to make it anything they choose to have it. Why does the gentleman want to go farther than the Constitution and laws now go? The Constitution says this writ shall be enjoyed in the freest manner possible; and the legislature says, it shall be granted as a matter of right in all cases, except in case of persons in prison for felony, or held in execution upon civil process. The gentleman wants something else; but what else ought he to have? I have not opened this question here. I wanted to avoid raising it. I did not want a question upon a sectional matter like this, to mingle in the discussions upon the adoption of the new Constitution. I know those who want to defeat this Constitution, are very anxious to have some sectional or disunion matter incorporated into the Constitution, for they know that they can then rally every friend of the Union against it. For that reason, I want to throw everything aside of that character. I say, therefore, if you adopt this provision, you furnish the opponents of the Constitution with an argument which I do not wish to put into their hands. I trust that we shall not, by our action, bring about this conflict; or, at least, keep this matter by itself for a distinct, separate vote.

Although gentlemen who have stood with me upon a good many platforms, upon this subject, are silent now, and probably will be by their votes, yet I hold it to be quite as important now, as it was just before the presidential election, to preserve this Union. [Laughter.] Most of all is it important to prevent a conflict between the civil and criminal jurisdiction of the United States and of the State. That is a grave subject, upon which no citizen, who has taken an oath to support the Constitution of the United States, should suffer a smile to come over his countenance; and if gentlemen will laugh at that, they will laugh at their own condemnation in the day of judgment.

I say upon this point, that the bare possibility of any provision creating a conflict between the United States and a State, is a matter of the highest delicacy. I trust, Mr. President, without reflecting upon the actions or motives of any one, that we shall leave this subject where we find it; and not, under the mistaken idea of enlarging the right of the writ of *habeas corpus*, in fact, restrict it, by putting it in the hands of a party legislature, or allow it to be made an instrument of tyranny and gross abuse, in the hands of any man who may wish to seize the person of another against his will, for a malicious, corrupt, or wicked design.

Mr. WILSON, of Natick. Mr. President: I am amazed at the extraordinary assertion of the member for Wilbraham, (Mr. Hallett). That assertion is this: that if the declaration is made in the Constitution of Massachusetts that the writ of *habeas corpus* is a writ of right, it is a declaration of war upon the United States. Sir, this is certainly an extraordinary doctrine to avow in a Constitutional Convention in America. *Magna Charta* recognizes the *habeas corpus* as a writ of right. This is the American doctrine, incorporated into the Constitutions of the American States. The Constitution of this State declares that "the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious, and ample manner." Now, the member for Wilbraham sees, in the annunciation of the doctrine—that the writ of *habeas corpus* is a writ of right, to "be enjoyed in the most free, easy, cheap, expeditious, and ample manner," not at the *discretion* of a judge of the supreme court, but as a right—a declaration of war upon the national government. He sees war, strife, bloodshed, and disunion, looming up on the horizon of the future. Sir, the judges of the supreme court may now exercise all the powers this proposed constitutional amendment imposes; they may, they can, do all that the amendment of my friend for Manchester (Mr. Dana) imposes upon them, and yet the member for Wilbraham is alarmed because the Constitution, if amended, will require the judges to do just what they all can lawfully do now.

I yield to no man, Mr. President, in love and devotion to that Union which binds together the sovereign States of this ever-extending, ever-advancing republic. I love that Union for the glories of the past, the renown and power of the present, and the brilliant hopes of the future. I hope that every foot of the North American continent will be incorporated into this Union—into this cluster of bright constellations. I wish to see freedom and free institutions for all, and chains and fetters for none, follow the advancing flag of the Union. But this morbid anxiety about the Union, which is sustained by the stout hearts and strong arms of more than twenty millions of American freemen, is supremely ridiculous and absurd. Sir, this Union does not depend for its perpetuity upon the self-appointed Union-savers, who, during the past three years have blurted into the ears of the country, their devotion to it. It lives in the hearts of twenty millions of men, ever ready to defend it and preserve it.

All of us here, Mr. President, appreciate the devotion to the Union, of the member for Wilbraham, (Mr. Hallett,) but none of us, I am sure, believe that even that gentleman has any fear for the safety of that Union. Should the amendment of my friend for Manchester, (Mr. Dana,) be adopted, I think the perilled Union will survive the shock, and that even the member for Wilbraham will sleep well of nights. His slumbers will be undisturbed by war, bloodshed, and strife, growing out of the exercise of the right of the writ of *habeas corpus*. If I saw in the amendment moved by the member for Manchester, any danger—if I could see in it any tendency to bring on a conflict with the general government, I would vote against it. I am not one who would advocate anything that should lead to bloodshed and conflict. But it seems to me that the right of the writ of *habeas corpus*, is one which should not be held at the discretion of the judges of the supreme court of Massachusetts, or any other class of men. It should be the constitutional right which we can appeal to at all times —which we may enjoy in the "most free, cheap, expeditious, and ample manner."

Reference has been made to the recent case in Pennsylvania. Last Saturday, Marshal Wynkoop was called upon on a writ of *habeas corpus*, issued by a judicial tribunal of that State, to produce the body of a person in his custody as a fugitive slave—placed in his custody by the de-

cision of Commissioner Ingraham, whose "alacrity" in the business of consigning persons claimed as fugitive slaves to their claimants, has won for him an immortality of infamy. Marshal Wynkoop, whose conduct in this case meets the unqualified condemnation even of the conservative presses of Philadelphia, refused to obey the summons. He was arrested, and held in imprisonment until Monday, when he came into court and produced his prisoner; the individual produced was delivered up to the marshal, who held him on the certificate of the commissioner, under the fugitive slave act. There was no danger, difficulty, or conflict. No one felt any shock. The sensitive nerves of the members of the Union-Safety Committees were not affected. The Union moved on in harmony in its course.

This extra anxiety about the Union, is the merest political cant. The country is sick of it. The sad fate of the chiefs in this Union cry, of the past three years, must convince even the member for Wilbraham, that this sitting up with the Union does not pay expenses. It is to be hoped that this Union delusion will soon pass away; and that the especial guardians of the Union will soon discover that the American people can preserve and protect that Union which makes them one people, without the special aid of their officious interference.

Mr. BARTLETT, of Boston. I have no desire to treat this as a matter of political interest, arising out of any past occurrence in this Commonwealth, but purely as a question of law. As I listened to my friend for Manchester, (Mr. Dana,) I at first thought he was right, and he would have commanded my vote but for a little farther scrutiny. I think there is error in the first place, in the suggestion that the courts of the Commonwealth have assumed a discretion not warranted by the statute. If I could find a trace of that, either in the authorities or in the oral history of proceedings under this great writ of liberty, I would aid in amending the law. But the gentleman is wrong. No court of this Commonwealth, in regulating the granting of the writ of *habeas corpus*, has ever, so far as I can learn, departed from the statute. The solution of the supposed disregard of the law is, I think, to be found in this. The statute regulating the right to the writ of *habeas corpus* provides for classes of cases. It has enumerated three classes in which it is discretionary with the court to grant the writ or not. It has left, by just implication, all else without discretion. But, Sir, the law has wisely provided beyond that, that in cases where there is no discretion, some preliminary case is to be made, before the exercise of the judicial power can be called into action. The provision is set forth with clearness and distinctness in the third section of the chapter. By that section, before any writ can issue, the applicant must make out a case under oath, complying with certain requisitions, and among them, not simply that the party is restrained of his liberty, but he must set forth, according to his best knowledge and belief, the cause or pretence for that restraint, and if it be under legal process, must annex a copy if he can.

Now, as happened in the Sims case, and as will happen again, the alleged cause of the restraint was shown on the face of the application to be perfectly legal and justifiable. The party, in compliance with the prerequisites of the statute, exhibited a case which, if it were correctly stated, was beyond the power of the court to relieve; and those statute prerequisites were framed with the intent that the true condition of the facts, if known, should be early developed—to the end that the authority and process of the Commonwealth should not be idly and frivolously invoked. It will be difficult otherwise to account for their insertion.

Such, I think, is the legal attitude of the case, and such the intent of the statute. As I said before, I have no desire to discuss the principles on which the Sims case was disposed of, but simply to vindicate what I think was a just construction of the statute regulating the writ of *habeas corpus*. If the Convention shall deem it proper that the writ should issue without scrutiny, at the will of the applicant, I should prefer a plain, distinct resolution to that effect, rather than the proposed amendments.

But so long as it is deemed wise that a party applying for the writ shall make some case, so that the court shall not be compelled to deal with frivolous applications, I think it would be better to let the law stand as it is.

Mr. FRENCH, of New Bedford, here obtained the floor.

Mr. DANA, for Manchester. If the gentleman from New Bedford will allow me a moment of his time, I should like to say a word in answer to the gentleman who has just taken his seat.

Mr. FRENCH. Certainly, I will yield a moment.

Mr. DANA. The legislature has said, that the application shall set forth four things. Now in the Sims case, those four things were set forth; first, the person by whom the party was imprisoned; second, the cause or pretence of the imprisonment; third, it was said to be by process, and we annexed what we supposed to be a copy of the process, a copy which was handed to us—whether

it was a precise copy we could not know—and then we verified it by oath. Now, here arises the question. We said, and I say now, that having complied with those four requisitions, we were entitled to our writ. The gentleman says, that though we complied with them, we were not entitled to it, unless the court considered that upon them we had made out a *prima facie* case of illegal restraint.

That is not so. And there our courts differ from the law and decision of other courts. The process, a copy of which we annexed, showed that our case did not come within the three classes of cases set forth as exceptions in the second section of the statute. The object of requiring the copy of the process to be annexed to the petition is, that the court may see whether the case comes within either of these classes of exceptions. If it does, they have a discretion. If not, they have not a discretion, but must issue the writ, and determine the lawfulness of the restraint upon the return to the writ. In the case of Sims, the process was clearly not within either of the exceptions.

Mr. BATES, of Plymouth. I rise to a question of order. I believe the gentleman has occupied his fifteen minutes.

The PRESIDENT. The gentleman is talking upon the time of the gentleman from New Bedford, (Mr. French).

Mr. DANA. As the gentleman rises to a question of order, I will not pursue the subject farther.

Mr. FRENCH, of New Bedford. Mr. President: I am in favor of the amendment which has been proposed by the gentleman for Manchester, and for the reason that it asserts that this writ of *habeas corpus* shall be issued as of right; and had it been thus issued on former and proper occasions, when there was a necessity for it—when it was applied for in a legal manner—this amendment would probably not have been offered on the present occasion. But, Sir, in one of the most important cases that was ever tried in Massachusetts, or that can ever arise here—a case where the personal liberty, during life, of a human being was concerned—that writ was denied. And notwithstanding the high eulogies the gentleman for Manchester, (Mr. Dana,) and others, have passed upon the judges of the supreme court of this Commonwealth, I should like to ask the gentleman for Manchester, for my own information as well as for the information of the Convention, how those judges treated him on an occasion when he applied for a writ of *habeas corpus* in a case of personal liberty, or slavery for life?

Mr. DANA, for Manchester. I would rather not answer that question—but I will say one thing. I have never said that the supreme court of this State, in the trial of the Sims case, was as impartial as the lot of humanity will allow. I was understood very generally, I am informed, as having used that expression; but what I said is this: that the law had done all it could do to make them as impartial as the lot of humanity will permit. As to the manner in which I was treated on that memorable occasion, I will not at present allude.

Mr. FRENCH. It is not at all strange to me that the gentleman declines to answer my inquiry. I will state another case, however. A very respectable attorney of this city (S. E. Sewall, Esq.) applied to one of the judges of the supreme court for a writ of *habeas corpus*, in the same case; but, Sir, without even deigning to reply to the applicant, that learned judge turned his back upon him and marched off—and that, too, in a case of personal liberty, or slavery during the poor man's natural life—the latter of which was assigned him in this land of the free. Under these circumstances, I ask, ought we not to have in our Constitution a provision like that proposed in this amendment—that this writ shall be issued as a right? These are some of the reasons why I am in favor of it.

Talk about danger of a dissolution of the Union! Why, we were told upon the floor of the Senate of the United States, a long time ago, that the women and children down South will take care of that; and I am surprised that large, robust, healthy looking gentlemen should attempt to make speeches here in favor of saving the Union, when it can be so well taken care of by others. There is no danger about this matter at all; and let me say that this amendment would never have been offered or required, had it not not been for these miserable tinkerers of the Union.

Sir, if the delegations from Massachusetts, which she sent to look after her interests at the capitol of our country from time to time, had stood up like men for the liberty our forefathers fought and bled for, we should not have had any talk about the danger of dissolution and secession. We were told here the other day, by the gentleman from Pittsfield, about the door of the capitol being slammed in the face of little Michigan, by the slave-holding power, when she applied for admission into the Union as a free State; and about the eloquent gentleman from Quincy, who stood up there and defended her rights; but where were the balance of the delegation from Massachusetts, who should have supported that old man eloquent? As we were told this morning in regard

to another gentleman, upon another occasion, they had gone over to the enemy, and were assisting him in slamming the door, and holding it there, too.

Sir, what has caused all the difficulty and trouble which we have experienced, and which makes it necessary that we should adopt some provision of this character for our own protection? It has been caused by the dough-faces of the Free States, who have gone to Washington and crawled upon their bellies in the dust to conciliate the slave-holders, and who assisted in the passage of the fugitive slave law, that their darling (Webster) might be made president of the United States. And, Sir, if the representatives from the Free States had stood up in congress for their rights and the rights of humanity, like the old man eloquent, we should have had no fugitive slave law, and no talk about it. Massachusetts alone was its godfather, and Massachusetts should be responsible for it. And since it exists, let us fix our Bill of Rights and our Constitution in a way that will hereafter guard our rights and secure liberty for all our citizens.

There is another amendment which ought to be submitted and adopted, touching trial by jury, and which would probably assist us on future occasions, upon this subject; but I am willing, if the present proposition is adopted, to let that pass for the present—that seems to be so well provided for now. Let us take care of the future as well as the present; and, while here, let us put into the Bill of Rights and the Constitution that which will hereafter secure liberty to every man not guilty of crime who treads upon Massachusetts soil and breathes the free air of the Old Bay State.

Before I take my seat, I desire to allude to one other matter, intimately connected with this subject. I wish to bring to the notice of the Convention a humiliating fact. It has been the custom, from time immemorial, when a member of the Boston bar has been called to his long home, to notice the event, and appropriate resolutions have been passed—no matter what had been his standing—by the bench as well as the bar; but when that lamented son of Massachusetts, (Robert Rantoul, Jr.)—the philanthropist, statesman and patriot, who did what he could, in the trial of Sims, for his personal liberty and his natural rights—departed to his long home, the Boston bench and bar—of the latter of which he was a member—were as silent as the grave in which he now rests. But, Sir, the time will come when justice will be done to him in that matter, as well as to those who procured the passage of the fugitive slave law; nor will those who applied it in Massachusetts, and those who have been the immediate cause of the trouble and excitement which has been experienced in this regard from one end of the Free States to the other, be forgotten—Union-savers and Southern dirt-eaters, in particular, not excepted.

Mr. LORD, of Salem. The only objection I have to the amendment which has been submitted to this resolve, is this: that in my judgment, it is a very serious restriction and limitation of the *habeas corpus*. The Constitution, as I understand it, provides that "The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner, and shall not be suspended by the legislature except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months." Now, Sir, neither the legislature nor the courts have any authority to touch the *habeas corpus* in such a way as shall not make it the most free, easy, cheap, and to be enjoyed in the most ample manner. And when you say that the legislature shall have discretion in this matter, or when you say that that body may prescribe the preliminaries in regard to it, you throw away all that is provided in the Constitution, and place the power in the hands of the legislature, from whose decision there is no appeal. Suppose that the gentleman who represents Wilbraham, (Mr. Hallett,) and those who agree with him in opinion, should prevail in the councils of the State, and the legislature should pass an act that no writ of *habeas corpus* should issue until the preliminaries were settled, and that the party in whose favor it was sued out should not be a fugitive slave. Does the gentleman want the legislature to say that a mere transient person shall not have the right to a *habeas corpus*? And yet, this amendment proposes to let the legislature fix all the preliminaries. No, Sir; I prize that *habeas corpus* altogether too highly. I am no liberty trading politician; I deal in no such capital, but I prize the *habeas corpus* as a matter of personal right. I do not want the legislature to have the power of fixing any preliminaries in regard to the *habeas corpus*, but I want it just as the Constitution gives it to us, as free, easy, cheap and expeditious as it can possibly be. The people, I am sure, have the greatest confidence in it, as it at present stands, and are ready to rely upon the judgment and discretion of the courts for its proper use. The supreme court has never refused to issue a writ of *habeas corpus*, unless it was manifest from the circumstances of the case that they would be obliged, upon the appearance of the party before them, to return him instantly to the same party in whose custody he was. Under such circum-

stances, of course, they would not issue the writ. I desire, therefore, to retain the *habeas corpus* of the Constitution just as it has ever existed, unincumbered and unrestricted by the preliminaries which the legislature may see fit to make. I shall vote against the amendment.

Mr. ADAMS, of Lowell, demanded the previous question.

Mr. SCHOULER, of Boston. I hope that the demand for the previous question will not be sustained, at least, if it is intended to apply to the resolutions as a whole. I gave up my right to the floor yesterday, and am willing to sit all day now, if I can be allowed to reach the resolution to which I desire to submit an amendment. I have no objection to the previous question so far as it applies to each particular resolution, but I hope it will not operate against the whole.

Mr. ADAMS. If my motion can be so modified that the question can be taken on the adoption of the resolutions separately, I am willing that that course should be taken.

The PRESIDENT. The motion of the gentleman can be so modified.

Mr. WALES, of Randolph, moved that when the question is taken, it be taken by yeas and nays.

A division being called for—ayes, 45; noes, 214—one-fifth not voting in the affirmative, the motion was not agreed to.

So the yeas and nays were not ordered.

The question was then taken on the amendment submitted by the gentleman for Wilbraham, (Mr. Hallett,) to the second resolve, and upon a division—ayes, 37; noes, 176—it was decided in the negative.

The question recurred upon the final passage of the first, second, and third resolves, and being taken, they were, without a division, agreed to.

The question then being upon the final passage of the fourth resolve,

Mr. DAVIS, of Worcester, moved to strike out the words "and no powers shall ever be assumed by the legislature that are not granted in this Constitution." So that if amended, the resolve will read, "This enumeration of rights shall not impair others retained by the people."

Mr. DAVIS. I make this motion because I see no reason why we should prohibit the legislature, and not the executive and judicial departments of government. I hope that the amendment will be adopted.

Mr. HALLETT. If that clause is stricken out, it is evident that the legislature may assume powers not granted in the Constitution.

Mr. SCHOULER, of Boston. This is the long-sought for resolution to which I have desired to offer an amendment. And if it is in order, I now move to strike out the whole resolve. It seems to me that some gentlemen, and particularly the member for Wilbraham, (Mr. Hallett,) during a considerable part of this session, have been endeavoring to legislate for the next twenty years to come, and to restrict the people, in their legislative capacity, from making laws. This very forenoon we had an attempt, which I believe was unsuccessful, to pass a resolution that the legislature should never have the power to proclaim martial law. We have provided that the legislature, to a certain extent, can never loan the State credit; and numerous other attempts have been made to limit the power of the legislature, in its future action. Now, Sir, I am opposed to this whole system; I believe that the people of the year 1853 are wise, and intelligent, and that a great deal of wisdom is assembled within this hall; I am in favor of progression, but I do not think we have reached the height of improvement. We shall go on improving, day by day, and year by year; and I do not wish to have any clause put into the Bill of Rights that will be, in all future time, held up to our vision, by men opposed to progress and reform.

Now I cannot conceive what is the object or intention of this resolution, except it be to endeavor to obtain, in a roundabout manner, that provision which we voted down the other day—that the State credit shall not be loaned except for internal improvement. The gentleman for Wilbraham attempted to make a provision that the legislature should not have the power to act in anything not expressly provided for in the Constitution; but I desire to have a discretionary power left in the hands of that body, for I feel confident they will never violate it. I hope we shall not set ourselves up as the masters of all future legislatures, to say what they shall, and shall not do. "Sufficient unto the day is the evil thereof."

The legislatures which are to come after us will exercise the discretion granted to them in a proper manner; and I am therefore opposed, altogether, to having this resolution adopted. I think that, if adopted, it will result in evil, and be the cause of many unpleasant discussions and conflicting opinions as to the right of the legislature, which if possible, ought to be avoided. I will not farther occupy the time of the Convention, but simply make the motion to strike out the whole of the fourth resolve.

The PRESIDENT. The Chair would inform the gentleman that his amendment is not in order at this time.

Mr. STETSON, of Braintree. I do not intend

to occupy the time of the Convention. I rose merely to say that if there is any one of these resolves to which this body ought to give their sanction, it is to the fourth resolve. I do not think it is the object of this Convention to confer power upon the legislature, but to reserve those powers which have been delegated by the Constitution, to be acted upon by the people. And, therefore, any restriction which will give them the right to control matters which may arise in the course of legislation, and which properly belong to them as sovereigns, ought to be adopted, and no more should be delegated to the legislature than is absolutely necessary to carry on the government.

Mr. MORTON, of Quincy, demanded the previous question.

The demand for the previous question was sustained, and the main question ordered to be now put.

The question being on the adoption of the amendment of the gentleman from Worcester, (Mr. Davis),

Mr. BRIGGS, of Pittsfield, asked for the yeas and nays.

The yeas and nays were not ordered.

The question was then taken on the adoption of the amendment, and it was, upon a division—ayes, 135; noes, 60—decided in the affirmative.

The question then recurred on the final passage of the fourth resolve, as amended, and a division being asked for, it was—by a vote of 116 ayes, and 118 noes—decided in the negative.

So the resolution was rejected.

*Imprisonment for Debt.*

The next resolve was read, as follows:—

*Resolved*, That the Bill of Rights be so amended that no person be imprisoned for debt, in this Commonwealth, except in those cases where fraud can be proved.

The question being upon its final passage,

Mr. MILLER, of Wareham, asked for the yeas and nays.

The yeas and nays were not ordered.

Mr. HUNTINGTON, of Northampton. I move farther to amend this resolution, by inserting after the word "debt," the words "hereafter contracted."

Mr. ALLEN, of Worcester. I would suggest to the gentleman from Northampton, that it would be better to change the phraseology, so that it will read that no debt contracted after the amendment shall go into operation, &c.

Mr. HUNTINGTON. That was my intention, and I am willing, therefore, to accept the modification.

Mr. DAVIS, of Plymouth, moved that the resolve be laid upon the table.

Mr. SCHOULER, of Boston, asked for the yeas and nays upon that motion.

The question being taken, upon a division—ayes, 54; noes, 196, one-fifth voting in the affirmative—the yeas and nays were ordered.

Mr. HALLETT. I understand the motion of the gentleman from Northampton to be pending.

The PRESIDENT. The yeas and nays are upon the motion to lay the resolve upon the table.

Mr. KEYES, for Abington. I move a reconsideration of the vote by which the yeas and nays were ordered.

The motion was agreed to.

The question then being taken on ordering the yeas and nays, it was decided in the negative.

The question recurred on the motion to lay the resolves upon the table, and being taken, the motion did not prevail.

Mr. HALLETT. I wish merely to say in regard to that amendment, that it seems to me to be only half doing what we propose to do. We have a perfect right to make provision concerning the process for collecting debts already contracted, as well as for those to be hereafter contracted, and there is no vested right with which an exemption from a process of arrest and imprisonment can interfere. The courts have decided this matter.

Now, the question which we have before us, is whether we shall, or shall not, put into the Constitution, a clause which abolishes all imprisonment for debt, except in cases of fraud—that is, of an honest, unfortunate debtor? If we are to do anything in regard to it, let us do it fairly and clearly; let there be no half-way work about it, and let the only distinction be between an honest and a fraudulent debtor.

There is another reason why the exemption from imprisonment should embrace debts already contracted. There are many persons now absent from the State because they have contracted debts which they have been unable to meet; and to avoid the disgrace of the dungeon, they have been compelled to go to other parts of the world, in order to preserve their personal freedom. There is no limitation which will allow a man to return, for though he may have been absent twenty years, yet, unless the debtor and creditor have been six years after the debt, in the same State, the moment the debtor sets his foot within the boundaries of the Commonwealth, he becomes liable at any moment to be seized and imprisoned for his former debt. Why will you retain such a provision as this, and thus hold the whip over the heads of the absent, who can never return to their

old homes? Another view presents itself. The stranger cannot come to Boston to trade, without being subject to imprisonment, if he owes a debt here, or anywhere in the world, which he cannot pay. What effect does this have upon the trade of Boston, Lowell, Lynn, &c.? Why not make a clean thing of it, and say that hereafter there shall be no more imprisonment for honest debt, upon the soil of Massachusetts, and allow every man who is now absent from his family and friends, to return home, and live in peace, or to come and visit the old homestead, or come and trade among us, without feeling that he is in danger of being snapped up at any moment, and held upon an affidavit. I hope that the amendment will not be adopted.

Mr. GRISWOLD, for Erving. I regret, Sir, that the mover of the original resolution consented to that amendment. It seems to me, that if we intend to do anything in regard to this matter, we had better make provision for all past as well as all future contracts. I should much prefer to adopt the resolution originally proposed, for I believe this imprisonment for debt, where there has been no intention of fraud, to be a relic of a barbarous age, of which the sooner we rid ourselves the better. I am willing to go as far as any one in this matter, for I believe that it is not only an act of duty, but an act of justice and humanity which we owe to our fellow man. I shall, therefore, vote against the amendment.

Mr. JENKS, of Boston. I would inquire of the Chair if it is in order to offer an amendment?

The PRESIDENT. It is not in order at this time, but the gentleman may be allowed to state it, if he desires.

Mr. JENKS. I propose to substitute the following amendment, which, I think, will obviate the entire difficulty under which we labor:—

No person shall be imprisoned in any case, who is not declared by law to be a criminal, or dangerous to the public safety.

Mr. HUNTINGTON. I did not introduce this amendment, by any means, from any hostility to the proposition of the gentleman from Easthampton, (Mr. Strong,) for I have been in favor of the principle which he desires to establish, for twenty years; and, I believe the first petition ever presented to the legislature of Massachusetts, praying for the abolishment of imprisonment for debt, was drawn up by myself. Since that time, my opinion has never changed; but I have on all occasions, whenever an opportunity has presented itself, advocated the principle to the extent of my humble ability, though never with any material success. I desire to see that principle adopted in the State of Massachusetts, and it is because of that desire that I introduced the amendment I did. It is my opinion, that if you do not introduce some qualification like that which I have proposed, you will array against the proposition a great number of persons who hold debts in their hands—and expect at some time to be able to collect them—against men who have absconded. There are persons to be found in almost every village in the Commonwealth, who hold debts contracted under this law, who were aware that this remedy existed, and might be applied. I do not say that it is unconstitutional to pass the resolution without such an amendment to it, but I think that it would do great injustice to a certain class of citizens; and I foresee, that unless there is some qualification of this character, there will be but little probability that the proposition will be adopted by the people. These are the motives which induced me to submit the amendment.

Mr. LORD, of Salem. I supposed from the debate which took place yesterday afternoon, that those who had influence in this Convention would mature this proposition, and it was because of some intimations to that effect, that I withdrew the proposition I made at that time. Now, no gentleman in this Convention is more opposed to putting a man in jail for mere indebtedness, than I am; and yet, you do not begin to remedy the evil which exists, by adopting this resolution. The real evil is a great deal deeper. What we want to say is, that no man shall imprison another by reason, and on account of any liability due from one to the other. To use the mere term "debt contracted" is to take but a very small class of cases, a class of cases in which there is no more reason for exempting a man from imprisonment for debt, than ordinary cases which come under a different head. Suppose, Sir, a poor man commences an action against a rich man, and after having been worried out, not being able to get a trial, he abandons his case. There is a bill of costs made out, and, because of his inability to pay that, the rich man takes him, puts him in jail, and keeps him there until the debt is cancelled.

Yet that man could not be imprisoned, if it had been a debt contracted in a bargain. Take a hundred cases; one was suggested to me yesterday: an express man, through a mere accident, loses a bundle of money; an action of tort is brought, judgment is recovered against the express man for the amount, and unless he pays, he has got to go to jail. And why? Simply because you do not provide for that class of cases. In his case, the suit is not upon a contract. There are, like-

wise, numerous other cases to be cited, but these two are sufficient to show, that if it is wrong to put a man in jail in one instance, for failing to discharge an obligation, it is wrong in another instance. It is a question entirely, however, of judicial remedy; it is not the contract, strictly speaking, that a man is enforcing when he sues upon a debt; but it is in reality for damages for the non-performance of the contract; for the non-payment of money. I am, therefore, entirely opposed to placing in the Constitution a provision which only half covers the case.

If, after a matter has arrived at a judgment, and that judgment can be discharged by the payment of five hundred dollars, what difference is it, whether that five hundred dollars is judgment obtained by reason of a contract made by me, or for anything else which is to be paid for in money?

After a party has obtained a judgment, and has thus ascertained the amount of damages, it then becomes a debt, and is precisely of the nature of a debt between two individuals, which it becomes a civil obligation to discharge. It is just as if the party had promised so much money; there can be no distinction, and the party is morally bound by law to pay that debt, just as much in one case as in another. And if it is a principle that you can put a man in jail in one case, and cannot in another, that distinction is founded in wrong and injustice. I therefore move to amend the amendment, by inserting after the words "hereafter contracted," the phrase "upon judgment hereafter recovered in any civil suit."

Mr. SCHOULER, of Boston. I have no doubt that the amendment proposed by the gentleman from Salem, abstractly considered, is right, and if I were sure that the people of the Commonwealth would understand it, I would go for it with all my heart; but I think that we have secured one great object, when we can recognize in the Constitution of Massachusetts, that no man shall be imprisoned for a debt, and that we may leave the rest of the matter to be acted upon by subsequent legislatures. If we can get this principle recognized in that instrument, we shall gain a great end; but I believe we should run a great risk, if we should adopt the amendment of the gentleman from Salem, and it is for this reason that I shall vote against it.

Mr. HOOD, of Lynn. I do not find anything in the programme marked out for this Convention in relation to imprisonment for debt; nor do I believe that this is an amendment which the people expected would be made to the Constitution. And, I submit to the friends of reform, if we have not done quite as much as is expedient, in considering and adopting the amendments which have been before this body since the session commenced? This is one of the questions which will excite a great deal of opposition to the Constitution which we intend to submit to the people, and it may be the means of causing it to be rejected altogether. The subject has been discussed for many years in the legislature, and never yet have they been able to pass a law so strong and sweeping as the one proposed here. There is a strong feeling in the community against the passage of any such provision, and I believe that it would be unwise to adopt the proposed amendment. Under these circumstances, therefore, while I am in favor of the principle, and am opposed to imprisonment for debt, I believe it is better to leave the whole matter to the legislature, to be acted upon by that body; and I move that the whole subject be indefinitely postponed.

The PRESIDENT. The Chair would state that such a motion is not in order at this time.

Mr. BRIGGS, of Pittsfield. I am opposed, entirely, to the imprisonment of an honest man because he cannot pay his debts, and it is for this reason that I shall vote for the amendment which has been proposed by my friend from Easthampton, (Mr. Strong). I shall not do as the gentleman from Lynn has just told us he would do: he says that he is in favor of the principle, he believes it to be right; but, nevertheless, will vote against it. The gentleman says that it is not in the programme of this Convention. Sir, it is in the programme of the minds and hearts of the people of Massachusetts; and, in my opinion, the time has arrived when the honest poor man should not be incarcerated four-and-twenty hours in a prison, surrounded by crime and criminals, simply because he cannot pay a debt he may have contracted.

It has been suggested by my friend from Boston, on my right, that we are going too far, and that the last clause, that he should not be imprisoned for debt except in cases of fraud, might not secure the rights of creditors against fraudulent debtors. Now it is my opinion that the legislature will take this matter in hand; and if we adopt this amendment it will give them ample power to deal with fraudulent debtors, who, having the means of paying, will not comply with their contract. If I did not believe this to be the case, I should be the last man to vote for the proposition. If I am not mistaken, it declares that, hereafter, no honest debtor, who on account of misfortune cannot pay his debts, shall be imprisoned.

Let me put it to the good sense of this Convention: Would it be a light matter for one of us to have a deputy-sheriff come into our house, where,

surrounded by a beloved family, we were enjoying the comfort of a peaceful home, take us by the collar, and thrust us into a cell, and say: "Oh! its only four-and-twenty hours you have got to stay there; it is n't much?"

Mr. President: I do not regard it so; I believe that it is a matter of a great deal of consequence, and I shall do all that lays in my power to prevent any honest man from staying even four-and-twenty hours within the walls of a prison-house. I thank the gentleman from Easthampton, (Mr. Strong,) for introducing this proposition; I shall go with him cordially in sustaining it, and I trust that the Convention will do the same.

Mr. BATES, of Plymouth. I have only a word to say in regard to a matter to which the gentleman from Pittsfield has failed to allude, and that is, that a debtor is not only incarcerated in prison, but then, unless he pays the expense—which amounts to about seven dollars—of swearing out before a justice, he must remain in confinement. I submit to gentlemen whether that is a proper mode of treating the poor debtor.

Now, Sir, I am opposed to the amendment introduced by the gentleman from Salem, (Mr. Lord,) because I prefer to leave that matter to be settled by the legislature, believing them to be fully able to provide for any difficulty that may arise. I am, however, in favor of the amendment of the gentleman from Northampton, (Mr. Huntington,) and I hope that it will be adopted by this Convention.

Mr. DAVIS, of Plymouth. I was unfortunately absent yesterday, in consequence of illness, when this subject came up for consideration. It was brought before us without notice, and upon the amendment offered, in the form of an additional resolution. And from what I have learned from others, who are not ignorant of the true bearings of this subject, there seems to have been manifested in its discussion either a timidity allied to a spirit of demagogism, or what I would much rather think was the case, ignorance on the part of many gentlemen as to the true position of the law upon this question.

Now, Sir, I deny, in the first place, that there is any imprisonment for debt in the Commonwealth of Massachusetts. She is not fairly to be charged with that disgrace. I am aware that gentlemen in this Convention, as well as out of it, have indulged themselves and others with the impression that a man may be imprisoned for any length of time, because he happens to owe a debt which he cannot pay. Gentlemen argue as if such were still the law. I deny that there is any imprisonment for debt, as such, in this Commonwealth. It was abolished years ago, through the honored and humane labors of the gentleman from Northampton, (Mr. Huntington,) and such as he.

Mr. BRIGGS. If the gentleman had been here yesterday, he would have learned from a public document which was read here, that during the last year there were thirteen hundred persons imprisoned for debt in this Commonwealth.

Mr. DAVIS. The gentleman will be kind enough to answer my argument when I have stated my position. I contend that there is essentially no imprisonment for debt, no imprisonment for poverty or inability, but imprisonment for not paying a debt when a man has the means to discharge it. The law is, that a man who owes his neighbor, and is not willing to pay, though he has the means, is imprisoned, not so much because he owes the debt which he cannot pay, as for endeavoring to avoid discharging the obligation of his contract, without showing his inability to perform it. I believe, Sir, that those who know me, will admit that I am in favor of the largest liberty; but I think it is necessary that some means should be allowed by the Constitution, and provided by law, which will give the power to the creditor to arrest a debtor, who may have contracted a debt with an honest intention, but who may have twenty thousand dollars in his pocket, which he has concluded not to pay. If this resolution is adopted and made part of your Constitution, a man may be going through your State from New York to Maine, his person loaded with money, and the Boston creditor, or the Berkshire trader, can neither detain him, or in any mode attach the money in his pocket. It is for these reasons that I can see nothing but a pure spirit of demagogism which would justify me in advocating a resolution of this character, without some such limitation as I have alluded to.

I maintain, Sir, that no honest poor man was ever imprisoned during the last ten years, even for twenty-four hours, except by his own voluntary act. I can merely say that, in my experience, I have never known a case where he could not get bail, or swear out within that time, if he had no property. But I have known very many cases where, by arresting the debtor, the debt was recovered, which, it was certain, could never have been obtained in any other way. I see no reason why we should not look upon this subject practically, as upon other subjects, which I am sure the gentleman from Pittsfield is disposed to do.

Do you mean to let a man shake a bag of gold in your face, and say he does not intend to pay you, because you have no remedy against him? Men are arrested every day who are strangers here, who contract debts here, and are about to escape to other States, and including them, and

all our population, thirteen hundred are said to have been imprisoned for debt. Not more than one to ten thousand of our own population! And then I am told that statistics show that only four per cent. of the amount for which they are committed is paid by imprisoned debtors. Sir, there are, and can be no statistics, which show the amount paid by persons arrested on *mesne process*, or the sums paid in private settlement by debtors on execution. Who can say what sums are paid for fear of an arrest.

Gentlemen are liable to be led into great misapprehension in this matter. What is the law upon this subject? No man can be arrested upon *mesne process* for debt, except upon affidavit that the creditor has absolute reasons for believing the debtor is about to depart *ex se;* and this power should be in some form retained. But if arrested, bail can be given to the officer without going to jail, and I thank God there are few honest poor men in this Commonwealth who cannot obtain it! The officers of the Commonwealth, when they arrest a man, give him the amplest opportunity to confer with his friends, and secure whatever bail may be demanded. And having been arrested, whether he gives bail or not, he can take the oath before the court when the writ is returned, or before the magistrates at any time, upon twenty-four hours notice.

But if not arrested on the original writ, the law is such that any man who has had process served upon him, can submit himself for examination before the court, and satisfy the court that he has no property. By so doing he exempts himself from arrest upon any execution which may thereafter issue. That is all that is necessary.

I therefore submit to the Convention that there is no good reason, and surely no popular demand, for the adoption of so sweeping an amendment; and I hope it will be fairly and fully considered before we take so important, and I think, unnecessary a step. We were not sent here for this purpose. If the people demand it, let the legislature take the matter in hand, and make such a provision as they may desire, and circumstances may warrant. The legislature abolished the old imprisonment for debt, and can be trusted to make such modifications as are required from time to time. Adopt this resolution, and the courts will hold that you must prove your fraud before you can make a constitutional arrest; or else, if a creditor be permitted to arrest a repudiating debtor on a charge of fraud, no man would dare to do it. Why? Because he would subject himself to an action for false, illegal, unconstitutional imprisonment, if he should happen to fail in proving his case. "Except in cases of fraud," are the words.

For these reasons, it seems to me it would be the height of infirmity for this Convention to make any provision of the kind. Not that the present law may not require amendment. I could suggest several, and one has been alluded to by my colleague. Let the creditor bear the expense, if the debtor obtains his discharge. Let the legislature modify the law, or sweep it away altogether, as they would have done, had the people demanded it, or had the gentleman from Pittsfield, from Salem, or from Boston, recommended it to the willing ears of the people of the Commonwealth.

In regard to the amendment submitted by the gentleman from Salem, (Mr. Lord,) I have to say, that it does not touch the real defects in the resolution; nor does the amendment nor the resolution remedy the true evils of false imprisonment in this Commonwealth. The gentleman from Salem knows very well, any lawyer who has had any practice knows, that the cases of imprisonment—wicked, malicious, and cruel imprisonment—do not arise from debts contracted, but are upon writs which are issued for petty slanders, assaults, and the like, on which poor men are arrested, ordered to be held to bail for exorbitant sums, in default of which they are committed to jail, and often lie there for months. Here, Sir, is an evil to be remedied. Why should a man be imprisoned, in a civil action, on a simple charge of slander or assault, on the mere statement of an enemy, before it is proved, and before a judgment has created an actual obligation?

But, again: I assert, if a man is honest, he is not and cannot be imprisoned for debt, if he desires to avoid it. If he is about to be taken on execution, in nine cases out of ten, he receives a card from the officer, and is notified to appear, with his bail, for the jail limits, at an appointed time; but he need not be imprisoned for an instant. He can then "swear out," in twenty-four hours, if he has no property; or by taking the benefit of the insolvent act, divest himself of his property, and discharge himself within the same period. So that, in fact, there is no actual imprisonment of an honest man, unless it be by his own voluntary act, or from an obstinate desire to obstruct and hinder the creditor from the recovery of a legal claim, at the expense of his own liberty. The law provides that the bond given upon execution must be taken at the jail; and this provision is a source of great annoyance and vexation, but may be easily remedied by the legislature, by providing that the officer, as well as the jailer, may take a bond for the prison limits.

Adopt this resolution, with or without the amendment, and it will have a tendency to keep down credits on the larger scale, and among the great dealers. But you cannot destroy the credit system altogether. It must exist among the grocers, and country traders, and mechanics; and this resolution will affect the poor man, as far as it has the tendency to destroy small credits, and will injure the small trader, who is obliged to trust, just so far as it destroys his remedy against the debtor.

I hope, therefore, that neither the amendment nor the resolution will be entertained by the Convention.

Mr. BIRD, of Walpole, moved the previous question.

Mr. SCHOULER, of Boston. I have no objection to the previous question being ordered. I understood the gentleman from Plymouth (Mr. Davis) as alluding to the new born zeal of this Convention in proposing this matter at this late period of the session, and I merely rose to observe that the gentleman would not, perhaps, deem it unfair, if I were to say that his new born zeal may possibly arise from the fact, that if this provision is passed, it will probably take away a part of his business. [Laughter.]

Mr. BIRD. I rise to a question of order. I moved the previous question, and I believe that no debate is allowed after such a motion.

Mr. DAVIS, of Plymouth. I understand the gentleman from Boston to state, that I made a charge that gentlemen acted upon this question from a spirit of demagogism.

Mr. SCHOULER. Perhaps the gentleman did not correctly understand me.

The PRESIDENT. Debate is not in order.

Mr. WILSON, of Natick. I understand that the question is on ordering the main question, moved by the gentleman from Walpole, (Mr. Bird). I make it a habit to vote for the previous question, and shall do so on this occasion, although I should like an opportunity to say a few words in reply to the gentleman from Plymouth, who designated us who are in favor of the resolve as demagogues or fools.

Mr. KEYES, for Abington. It was my intention, also, to have replied to the remarks of the gentleman from Plymouth. I informed the gentleman from Walpole of that fact, but he said that if he could obtain the floor, he would move the previous question. He did obtain the floor, and, without affording an opportunity to reply to what has been said, made that motion. What I desire now is, to have the previous question opposed, so that it may not appear that we have indorsed any such sentiments as those we have just heard.

The question then being on the demand for the previous question, the demand was sustained, and the main question ordered to be now put.

The question being taken upon the motion of the gentleman from Salem, (Mr. Lord,) to amend the amendment of the gentleman from Northampton, it was decided in the negative.

The question was then taken upon the amendment of the gentleman from Northampton, (Mr. Huntington,) to insert the words "hereafter contracted," after the word "debt," in the resolution, and the amendment was adopted.

The question recurred on the final passage of the resolution, as amended, and being taken, it was decided in the affirmative.

So the resolution was adopted.

*Amendments to the Constitution.*

The next matter in the Orders of the Day was the resolutions reported by the Committee, concerning future amendments to the Constitution.

The resolves were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution, that—

A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year 1873, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city; and, if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect. And such delegates shall meet in Convention at the State House on the first Monday of May next ensuing, and, when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And, if

such alterations and amendments as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

2. *Resolved*, That whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall, at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the Legislature, at its next session, to pass an Act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

The question being on ordering the resolutions to a second reading,

Mr. SARGENT, of Cambridge. I hope, Sir, that these resolves will not be adopted. If I understand them correctly, they provide that the basis of representation which you have established, shall be taken as the basis for your future Conventions. Now, Sir, in order to ascertain precisely what we are asked to do, it will be necessary for me to call your attention again to that basis of representation. In doing this, I do not propose to go over the ground that I have already gone over, or to institute the comparisons, or to repeat the arguments I have already advanced, when addressing the Convention in reference to the proposed basis of representation.

Mr. SUMNER, for Marshfield. Will the gentleman allow me to set him right? I understand the gentleman to say, that in case of future Conventions for the amendment of the Constitution, the basis of representation is to be in accordance with the existing representative basis. That is not my understanding of this proposition. The existing basis of representation is contemplated in the first amendment, but the second provides for Conventions to be held hereafter in any way that the legislature may determine.

Mr. SARGENT. I am aware, Sir, that the second resolution places the power in the legislature to call Conventions in any manner they may determine. But, Sir, you provide that for the Convention to be called in 1873 you shall take the basis of representation that has been established for the House of Representatives; and, Sir, I do not understand the second resolution as changing the principles, or as abridging the power of the minority in the least, to adopt that as the basis of any other Convention.

But, Sir, to proceed. I was saying that I did not propose to repeat the arguments which I had the honor of presenting to the Convention on a former occasion, when this subject was under consideration. Two amendments have been made in the system since that time; one reducing the mean increasing ratio from 5,000 to 4,000 for each additional representative above the second, which will give eight additional representatives; and the other striking out the limitation; so that the number of representatives will be increased at every decennial period.

These amendments affect the general provisions, or the practical operations of the system so little, that the considerations which I have heretofore presented, apply with equal force to the system in its present amended form. But, Sir, let us examine more critically this basis of representation which we have adopted, in order that we may ascertain whether it be such a basis as ought to be adopted as the basis of future Conventions to amend the Constitution.

In the remarks which I took occasion to make when this subject was under discussion before, I stated that, under the present existing Constitution, a change of sixteen representatives out of three hundred and seventy-two from four counties to four other counties, would equalize the present representation between the several counties. It has been contended, however, by the friends of this amendment, that voters would be a more just basis than population. I have prepared the following table, in order to ascertain the inequalities of the present system under the application of that rule:—

| | Apportionment. | Equal Proportion on voters. |
|---|---|---|
| Suffolk, | 46 4-10 | 46 1-10 |
| Essex, | 44 7-10 | 49 6-10 |
| Middlesex, | 58 4-10 | 56 1-10 |
| Worcester, | 55 6-10 | 52 |
| Hampshire, | 15 6-10 | 15 1-10 |
| Hampden, | 19 3-10 | 19 4-10 |
| Franklin, | 16 2-10 | 14 2-10 |
| Berkshire, | 21 9-10 | 19 8-10 |
| Norfolk, | 28 | 28 3-10 |
| Bristol, | 26 5-10 | 26 9-10 |
| Plymouth, | 21 4-10 | 25 3-10 |
| Barnstable, | 13 3-10 | 14 9-10 |

| | Apportionment. | Equal Proportion on voters. |
|---|---|---|
| Dukes, | 2 4-10 | 1 9-10 |
| Nantucket, | 3 | 2 7-10 |
| | 372 7-10 | 372 3-10 |
| Loss by fractions, | | 4-10 |

By this table it will be seen that the four counties which have sixteen more than their proportion, on population, have only eight and a fraction more than their proportion on voters; and it shows also that the difference between population and voters, as a basis, is not so great as some gentlemen have imagined. But, Sir, let us proceed to an examination of the system which has been adopted by the Convention. The following table will show the number of representatives to which each county is entitled under the first apportionment, as also the number to which each county would be entitled if apportioned equally upon population :—

| | By Butler's Plan. | Equality on Population. |
|---|---|---|
| Suffolk, | 37 6-10 | 60 7-10 |
| Essex, | 46 8-10 | 52 9-10 |
| Middlesex, | 62 8-10 | 64 8-10 |
| Worcester, | 61 2-10 | 52 7-10 |
| Hampshire, | 20 8-10 | 14 2-10 |
| Hampden, | 23 | 20 9-10 |
| Franklin, | 21 2-10 | 12 8-10 |
| Berkshire, | 28 2-10 | 20 3-10 |
| Norfolk, | 30 2-10 | 32 2-10 |
| Bristol, | 29 6-10 | 31 2-10 |
| Plymouth, | 23 8-10 | 22 7-10 |
| Barnstable, | 14 6-10 | 14 1-10 |
| Dukes, | 2 6-10 | 1 8-10 |
| Nantucket, | 3 | 3 6-10 |
| | 405 4-10 | 404 9-10 |
| Loss by fractions, | | 5-10 |

By the foregoing table it will be seen that the same four counties of Worcester, Hampshire, Franklin and Berkshire, are permitted to elect 131 4-10 members, while they would be entitled to 100 4-10 as their equal proportion of population; and I also find that they would be entitled to only 107 4-10 on voters, thus giving them on population 31, and on voters 23 5-10 more than their equal proportion. But, Sir, this does not exhibit clearly the inequalities of the proposed amendment. I have prepared another table, taking the county of Franklin as the basis, which will show more distinctly the inequalities of this system. That county is entitled to elect 21 2-10 representatives, or one for every 1,457 inhabitants. The following table exhibits the number which each county would have, if placed upon an equal footing with the county of Franklin :—

| | Apportionment. | Equal Proportion with Franklin. |
|---|---|---|
| Franklin, | 21 2-10 | 21 2-10 |
| Hampshire, | 20 8-10 | 23 5-10 |
| Hampden, | 23 | 34 4-10 |
| Berkshire, | 28 2-10 | 33 5-10 |
| Worcester, | 61 2-10 | 86 9-10 |
| Middlesex, | 62 8-10 | 106 9-10 |
| Essex, | 46 8-10 | 87 2-10 |
| Norfolk, | 30 2-10 | 53 1-10 |
| Bristol, | 29 6-10 | 51 4-10 |
| Plymouth, | 23 8-10 | 37 4-10 |
| Barnstable, | 14 6-10 | 23 3-10 |
| Dukes, | 2 6-10 | 3 |
| Nantucket, | 3 | 6 |
| Suffolk, | 37 6-10 | 100 |
| | 405 4-10 | 667 8-10 |

Thus it will be seen, that the county of Franklin gets in a House of 405 4-10 members, the full proportion she would be entitled to in a House of 667.

But it may be objected, that it is unfair to present one extreme of the case, without exibiting the other also. To meet this objection, I have prepared the following table, taking the county of Suffolk as a basis. That county elects one representative for every 3,876 inhabitants, and the following table shows what each county would be entitled to, if placed upon an equal footing with that county :—

| | Apportionment. | Equal proportion with Suffolk. |
|---|---|---|
| Suffolk, | 37 6-10 | 37 6-10 |
| Essex, | 46 8-10 | 32 8-10 |
| Middlesex, | 62 8-10 | 40 1-10 |
| Worcester, | 61 2-10 | 32 6-10 |
| Hampshire, | 20 8-10 | 8 8-10 |
| Hampden, | 23 | 12 9-10 |
| Franklin, | 21 2-10 | 7 9-10 |
| Berkshire, | 28 2-10 | 12 6-10 |
| Norfolk, | 30 2-10 | 19 9-10 |
| Bristol, | 29 6-10 | 19 3-10 |
| Plymouth, | 23 8-10 | 14 |
| Barnstable, | 14 6-10 | 8 7-10 |
| Dukes, | 2 6-10 | 1 1-10 |
| Nantucket, | 3 | 2 2-10 |
| | 405 4-10 | 250 5-10 |

Thus, the county of Suffolk is allowed in a House of 405 4-10, no more members than would be her equal proportion of a House of only 250 5-10 members. But, Sir, let us leave this corrupt and corrupting county of Suffolk,—this

immense and dangerous power of centralization, which has been wielded with such crushing force over this Convention,—this congregated mass of foreign population, which gentlemen seem so to dread that they are unwilling they shall exercise any right, or any privilege, but the right to breathe, and the privilege to toil. Let us leave all these out of the question, and proceed to institute a comparison between different agricultural portions of the State. If you combine the population of the five western counties, ( to wit, Worcester, Hampden, Hampshire, Franklin and Berkshire,) they are entitled to elect 154 4-10 representatives, or one for every 1,883 inhabitants. Now, if you were to give to the counties of Middlesex and Essex, a representative for the same number of inhabitants, they would be entitled to elect 150 2-10, while they now get but 109 6-10. They would be entitled to 40 6-10 more than they get under the proposed amendment.

The same proportion would give the six southern counties, instead of 103 8-10, which they now get, 134 8-10, or an increase of thirty-one members. But where have we actually placed the power?

I find there are eighty-four cities and towns, with a population of 651,245, which will, under this system, elect one hundred and ninety-four members, or one for every 3,356 inhabitants, while the remaining two hundred and thirty-seven towns, with a population of 322,470, being 2,101 less than one-third the population of the State, will elect 205 members annually, or one for every 1,577 inhabitants, being a clear majority of eleven, and in the valuation year, they will have thirty-two additional, making their majority on that year forty-three, equal to an average annual representation of 211 4-10, or 17 4-10 majority.

The estimate does not include the seven towns which have been incorporated since 1850, and which will increase that majority.

Now, Sir, there is where you have placed the power in the House of Representatives, and we are asked to adopt a measure to perpetuate that power in the hands of this minority, for all coming time. Sir, if this was a mere temporary measure, as some gentlemen have professed to believe it to be—one which the people could alter or annul, at pleasure—it would be a matter of much less consequence. But when you propose to place in this minority a self-perpetuating power,—when you propose to place in their hands an uncontrolled and uncontrollable power to dictate all future amendments to the Constitution, a power far above and beyond the reach of the people, save by revolution,—it becomes a question of the greatest magnitude. Sir, do men willingly yield up power, when once placed within their grasp? The history of the world proves they do not. But I need not go beyond the history of this Convention, to prove that doctrine.

Sir, this Convention is controlled by a majority of delegates that represent only a minority of the people; and what is the consequence? Why, when the question was taken on the introduction of an equal system of representation, as presented by the gentleman from Taunton, (Mr. Morton,) that measure was defeated by a majority of 81 votes, the vote being—ayes, 117; noes, 198. And yet the 117 ayes represented a constituency more than thirty-five thousand greater than was represented by the 198 noes. Now, Sir, if we find on the part of the majority of this Convention, representing, as they do, only a minority of the people, no disposition to yield up any portion of the power they now possess, for the purpose of establishing an equal system of representation, a system which many of them acknowledge to be not only just, but strictly in accordance with the fundamental principles of a republican government, can we expect that those who come after them will more willingly yield up the still greater power with which you are about to invest them?

Sir, to whom are you to look to restore this power into the hands of the majority of the people? You are to look to this very minority in whose hands you now place it. For you can have no special Convention that the minority do not see fit to grant you; and you can have no amendments to your Constitution, that that minority do not approve. True, the people will have left in their hands the power to reject any amendments that such Convention may see fit to propose. But I submit, that they will have reserved in their hands no constitutional power to make any amendments to their Constitution, which they may wish to make, except such as that minority shall graciously condescend to permit them to make. And the gentleman for Marshfield will perceive that it makes no kind of difference, that the power will be given to the legislature to call a Convention at any time, and to establish the basis of representation for that Convention; for it will be just such a basis as the minority pleases to adopt, and no other.

It is no answer to say "there is no danger that the power will ever be abused." It is our duty, in framing a Constitution, so to apportion the power, if possible, that it *cannot* be abused. There is danger, there is always great danger, when the many place power unconditionally in the hands of the few. I trust this Convention

will pause and consider this matter well, before they adopt a measure by which all power over their Constitution will be yielded into the hands of a mere fraction of a minority. If this act shall be consummated, the majority of the people of this Commonwealth will have no more power "to alter and amend their Constitution of government," than had our fathers, as subjects of the British crown. The only power—the only right—they will have reserved to themselves, will be the power of supplication, or the right of revolution.

Mr. GRISWOLD, for Erving. I move to amend the first resolution, by striking out from the twentieth line the word "and" and inserting after the word "cities" the words "and districts," so that it will read "towns, cities and districts;" also in the next line, to insert after the word "elect," the words "in any year of that decennial period," so that it will read "and thereafter, on the first Monday of March ensuing, meetings shall be held and delegates shall be chosen, in all the towns, cities and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns, cities and districts shall then be entitled to elect in any year of that decennial period."

The question being taken, the amendments were adopted.

Mr. GRISWOLD. I move, also, to strike out from the twenty-second line of the first resolve, the word "Monday" and insert the word "Wednesday," so that if amended, it will read "and such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing," &c.

The amendment was agreed to.

Mr. HALLETT, for Wilbraham. There is a verbal amendment which I desire to make. I move to strike out from the tenth line, the words "in the newspapers in which the laws are officially published," and insert after the word "shall" the word "officially," so that if amended, it will read "who shall thereupon examine the same, and shall officially publish the number of yeas and nays," &c.

The question being taken, the amendment was agreed to.

Mr. LORD, of Salem. I move to amend the first resolution, by inserting after the word "affirmative" in the thirteenth line, the words "and such majority shall be at least equal to one-half of the whole number of votes cast for the governor at such election." If gentlemen have observed the phraseology of this resolution, they will have noticed, that without any action upon the part of the government of the Commonwealth, the voters of the several towns will be called upon by the selectmen to vote upon the question whether there shall be a Convention to revise the Constitution. Now, Sir, without making any pretensions to the gift of prophesy, I venture to say, that when the time arrives for this proposition to be voted upon, but very few of the people will be aware of it, and consequently will not vote for it. Indeed, Sir, I believe the first period provided in the Constitution for the calling of a Convention, was allowed to pass by without any attention being paid to it whatever, and I submit whether in the present instance the same difficulty will not occur. It may be, however, that in some few of the towns, the people will be aware of the existence of such a proposition, and will vote for it. But, I appeal to the good sense of this body, if a Convention ought to be called upon such a basis as that—the votes which may be deposited in half a dozen towns. I know that it is said, that those who do not vote against the proposition, assent to it, but in the matter of calling a Convention to revise the fundamental law of the Commonwealth, I do not think that a sound principle. I think that of those who go to the polls when the time shall arrive and vote, at least a majority should vote in favor of calling a Convention. Under this provision, as expressed in the resolution now under consideration, it may be the case that a hundred men may call a Convention, if no more vote for it. Such a state of affairs would of course result only from inattention, but that very inattention and negligence, is brought about by the fact that a Convention is not needed. When the public mind is quiet, when public affairs are undisturbed, when the people of the Commonwealth are enjoying prosperity in all branches of industry, when nobody feels the hand of government pressing heavily upon him, then there comes along unannounced and unheralded this day on which the votes of the people are to determine whether or not there shall be a Convention. And yet, notwithstanding the people have no desire for it, five hundred persons who may happen to be aware of such a proposition, may, by depositing their votes, cause a Convention to be called, and with it all the necessary or unnecessary attendant expense. I hope, Sir, that we shall never consent to adopt any such self-acting, self-regulating provision, founded upon a distrust of every officer in the Commonwealth, except the Secretary of State, but that we shall amend it in such a manner that it shall receive a respectable number of votes, if any at all. I am aware that this amendment is to be voted down immediately; it has more

than once been my fortune to suggest views here, which men quietly tell me ought not to be adopted, but yet they do not see exactly on what grounds to base their advice; and such is the case on the present occasion; gentlemen cannot see how they can answer the suggestions I have made, with any show of reason or argument, but they have a way to get rid of them more quietly, and it is the way in which all questions are to be settled. I deemed it my duty, however, to present these views, and to make the proposition I did, that when the day arrives for the question of the calling of a Convention to be decided, unattended, as it will be, by any official announcement, unaccompanied by any call upon the people to assemble and vote upon that question, we should provide that at least the votes of a majority of those who go to the polls, shall be in favor of calling such a Convention, so that it may not be sprung upon the people of the Commonwealth by a few, more diligent, more active individuals than others, who may be aware of the existence of such a provision in the Constitution.

Mr. HOPKINSON, of Boston. I would inquire of the gentleman from Salem, whether some doubt may not exist whether the language would not imply that such a majority shall be more than half.

Mr. LORD. I suppose it does not make much difference what the words are; the result will be the same. The same abiguity occurred to me, but I supposed that the Convention understood it.

Mr. BATES, of Plymouth, demanded the previous question.

Mr. LORD. Inasmuch as that applies to all the resolutions embraced in this Report, and as I know of no gentlemen who desire to make any remarks, or introduce any amendment, I call for the yeas and nays upon the previous question.

The question then being taken on ordering the yeas and nays, upon a division—ayes, 41; noes, 136—one-fifth voting in the affirmative, the yeas and nays were ordered.

Mr. GARDNER, of Boston, moved that the Convention do now adjourn.

The motion was not agreed to, there being upon a division—ayes, 66; noes, 90.

So the Convention refused to adjourn.

The PRESIDENT. The question is, "Shall the main question be now put?" Upon this question the yeas and nays have been ordered. The Secretary will call the roll.

The Secretary commenced the call.

Mr. BATES, of Plymouth. I will withdraw the motion for the previous question.

Mr. BIRD, of Walpole. Can the demand for the previous question be withdrawn after the yeas and nays have been ordered?

The PRESIDENT. It may, by general consent, be withdrawn.

Mr. BIRD. I object.

Mr. LORD. I believe it has been the uniform practice of this Convention, although it is different in congress, to allow the mover to withdraw a motion, unless objection be made. I am perfectly willing, however, to spend an hour in taking the yeas and nays, if the Convention desire it.

The PRESIDENT. The Chair would state, in regard to the withdrawal of the motion of the gentleman from Plymouth, (Mr. Bates,) that, by an express rule of the Convention, the gentleman has a right to withdraw it. The rule is as follows:—

"After a motion is stated or read by the President, it shall be deemed to be in the possession of the Convention, and shall be disposed of by vote of the Convention, but the mover may withdraw it at any time before a decision or amendment, except a motion to reconsider, which shall not be withdrawn after the time has elapsed within which it could originally be made."

Mr. BATES. I have no particular wish to withdraw it.

Mr. DANA, for Manchester. Is it in order to move an adjournment?

The PRESIDENT. The Chair rules that it is out of order to entertain any motion whatever.

Mr. GARDNER, of Boston. I supposed that a motion to adjourn was always in order.

The PRESIDENT. The Secretary has commenced calling the roll, and he will proceed with the call.

Mr. NAYSON, of Amesbury. I rise to ask information of the Chair. I understand, that after the President has given the order to the Secretary to call the roll, no debate or motion can intervene; and that, therefore, the motion of the gentleman for Manchester cannot be entertained at this time. Is that the decision of the Chair?

The PRESIDENT. The Chair will state the circumstances. The question was stated as usual; the Secretary was directed to call the roll, and commenced to call the roll before the gentleman for Manchester arose and addressed the Chair.

Mr. SCHOULER, of Boston. In my judgment, the decision of the Chair is correct.

The PRESIDENT. The Chair will state the question once more. The motion was made by the gentleman from Plymouth, (Mr. Bates,) for the previous question; pending that question, the gentleman from Salem (Mr. Lord) moved, that on that

motion the yeas and nays be taken; that motion was agreed to, and a motion was made by the gentleman from Boston, (Mr. Gardner,) that the Convention adjourn, which did not prevail. The Secretary was requested to call the roll, and commenced to do so, when the delegate for Manchester, (Mr. Dana,) rose and addressed the Chair; the Chair recognized him, and ruled that it was not in order to make any motion whatever, and he still believes that decision to be correct. The Secretary will proceed to call the roll.

Mr. LORD. As we have no printed orders, I would inquire of the Chair whether the main question is upon ordering the resolutions to a final passage, or to a second reading merely?

The PRESIDENT. The main question is upon ordering them to a second reading.

The question then being taken by yeas and nays, on ordering the previous question, they resulted—yeas, 106; nays, 33—as follows:—

YEAS.

| | |
|---|---|
| Allen, Parsons | Gates, Elbridge |
| Allis, Josiah | Gilbert, Wanton C. |
| Alvord, D. W. | Giles, Charles G. |
| Austin, George | Goulding, Jason |
| Baker, Hillel | Green, Jabez |
| Bancroft, Alpheus | Griswold, Josiah W. |
| Bates, Moses, Jr., | Griswold, Whiting |
| Beal, John | Hallett, B. F. |
| Bennett, William, Jr. | Hapgood, Lyman W. |
| Bird, Francis W. | Hapgood, Seth |
| Boutwell, George S. | Harmon, Phineas |
| Breed, Hiram N. | Hawkes, Stephen E. |
| Brown, Hammond | Hayden, Isaac |
| Brown, Hiram C. | Heath, Ezra, 2d |
| Brownell, Joseph | Hood, George |
| Bryant, Patrick | Howard, Martin |
| Bumpus, Cephas C. | Howland, Abraham H. |
| Case, Isaac | Hoyt, Henry K. |
| Churchill, J. McKean | Huntington, George H. |
| Clark, Ransom | Hurlbut, Moses C. |
| Clark, Salah | Hyde, Benjamin D. |
| Cole, Sumner | Jacobs, John |
| Davis, Charles G. | Knight, Jefferson |
| Davis, Isaac | Knox, Albert |
| Day, Gilman | Ladd, Gardner P. |
| Dean, Silas | Langdon, Wilber C. |
| Denton, Augustus | Leland, Alden |
| Duncan, Samuel | Loomis, E. Justin |
| Eames, Philip | Merritt, Simeon |
| Easland, Peter | Monroe, James L. |
| Easton, James, 2d | Morton, Elbridge G. |
| Eaton, Calvin D. | Morton, William S. |
| Edwards, Samuel | Nash, Hiram |
| Ely, Joseph M. | Newman, Charles |
| Fay, Sullivan | Osgood, Charles |
| Fitch, Ezekiel W. | Packer, E. Wing |
| French, Charles A. | Paine, Benjamin |
| Frothirgham, R'd, Jr. | Partridge, John |
| Gale, Luther | Penniman, John |
| Gardner, Henry J. | Phelps, Charles |
| Gardner, Johnson | Pierce, Henry |
| Rantoul, Robert | Sumner, Increase |
| Rawson, Silas | Swain, Alanson |
| Richardson, Samuel H. | Thompson, Charles |
| Ring, Elkanah, Jr. | Tilton, Horatio W. |
| Ross, David S. | Wallis, Freeland |
| Royce, James C. | Walker, Amasa |
| Sprague, Melzar | Ward, Andrew H. |
| Spooner, Samuel W. | Weston, Gershom B. |
| Stevens, Charles G. | Whitney, Daniel S. |
| Stevens, Granville | Whitney, James S. |
| Stiles, Gideon | Wood, Charles C. |
| Sumner, Charles | Wood, Otis |

NAYS.

| | |
|---|---|
| Adams, Benjamin P. | Houghton, Samuel |
| Andrews, Robert | Jenkins, John |
| Bartlett, Sidney | Kellogg, Giles C. |
| Bradbury, Ebenezer | Kendall, Isaac |
| Bradford, William J. A. | Knight, Joseph |
| Brinley, Francis | Lincoln, Fred. W., Jr. |
| Briggs, George N. | Lord, Otis P. |
| Buck, Asahel | Miller, Seth, Jr. |
| Bullock, Rufus | Mixter, Samuel |
| Carter, Timothy W. | Morey, George |
| Cogswell, Nathaniel | Plunkett, William C. |
| Cook, Charles E. | Pomroy, Jeremiah |
| Deming, Elijah S. | Preston, Jonathan |
| Ely, Homer | Sikes, Chester |
| Giles, Joel | Simmons, Perez |
| Hale, Nathan | White, Benjamin |
| Heard, Charles | |

ABSENT.

| | |
|---|---|
| Abbott, Alfred A. | Bronson, Asa |
| Abbott, Josiah G. | Brown, Adolphus F. |
| Adams, Shubael P. | Brown, Alpheus R. |
| Aldrich, P. Emory | Brown, Artemas |
| Allen, Charles | Brownell, Frederick |
| Allen, James B. | Bullen, Amos H. |
| Allen, Joel C. | Burlingame, Anson |
| Alley, John B. | Butler, Benjamin F. |
| Appleton, William | Cady, Henry |
| Aspinwall, William | Caruthers, William |
| Atwood, David C. | Chandler, Amariah |
| Ayres, Samuel | Chapin, Chester W. |
| Ballard, Alvah | Chapin, Daniel E. |
| Ball, George S. | Chapin, Henry |
| Banks, Nathaniel P., Jr. | Childs, Josiah |
| Barrows, Joseph | Choate, Rufus |
| Bartlett, Russel | Clark, Henry |
| Barrett, Marcus | Clarke, Alpheus B. |
| Bates, Eliakim A. | Clarke, Stillman |
| Beach, Erasmus D. | Cleverly, William |
| Beebe, James M. | Coggin, Jacob |
| Bell, Luther V. | Cole, Lansing J. |
| Bennett, Zephaniah | Conkey, Ithamar |
| Bigelow, Edward B. | Cooledge, Henry F. |
| Bigelow, Jacob | Copeland, Benjamin F. |
| Bishop, Henry W. | Crane, George B. |
| Blagden, George W. | Cressy, Oliver S. |
| Bliss, Gad O. | Crittenden, Simeon |
| Bliss, William C. | Crockett, George W. |
| Booth, William S. | Crosby, Leander |
| Boutwell, Sewell | Cross, Joseph W. |
| Braman, Milton P. | Crowell, Seth |
| Brewster, Osmyn | Crowninshield, F. B. |

Cummings, Joseph
Curtis, Wilbur
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Dehon, William
Dennison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Dunham, Bradish
Durgin, John M.
Earle, John M.
Eaton, Lilley
Edwards, Elisha
Eustis, William T.
Farwell, A. G.
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Foster, Aaron
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
Freeman, James M.
French, Charles H.
French, Rodney
French, Samuel
Gilbert, Washington
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves, John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Hadley, Samuel P.
Hale, Artemas
Hall, Charles B.
Hammond, A. B.
Haskell, George
Haskins, William
Hathaway, Elnathan P.
Hayward, George
Hazewell, Charles C.
Henry, Samuel
Hersey, Henry
Hewes, James
Hewes, William H.
Heywood, Levi
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Hubbard, William J.
Hunt, Charles E.
Hunt, William
Huntington, Asahel
Huntington, Charles P.
Hurlburt, Samuel A.
Ide, Abijah M., Jr.
Jackson, Samuel
James, William
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knight, Hiram
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Kuhn, George H.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Lincoln, Abishai
Little, Otis
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Meader, Reuben
Moore, James M.
Morss, Joseph B.
Morton, Marcus
Morton, Marcus, Jr.
Nayson, Jonathan
Nichols, William
Norton, Alfred
Noyes, Daniel
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Orne, Benjamin S.
Paige, James W.
Paine, Henry
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parker, Samuel D.
Parris, Jonathan
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Daniel A.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Phinney, Sylvanus B.
Pool, James M.
Powers, Peter
Prince, F. O.
Putnam, George
Putnam, John A.
Read, James
Reed, Sampson
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Rockwell, Julius
Rockwood, Joseph M.
Rogers, John
Sampson, George R.
Sanderson, Amasa
Sanderson, Chester
Sargent, John
Schouler, William
Sheldon, Luther
Sherman, Charles
Sherril, John
Simonds, John W.
Sleeper, John S.
Smith, Matthew
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Train, Charles R.
Turner, David
Turner, David P.
Tyler, John S.
Tyler, William
Underwood, Orison
Upham, Charles W.
Upton, George B.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Walker, Samuel
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, George
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilkinson, Ezra
Williams, Henry
Williams, J. B.
Wilson, Henry
Wilson, Milo
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel
Wood, William H.
Woods, Josiah B.
Wright, Ezekiel

Absent and not voting, 280.

So the demand for the previous question was sustained, and the main question ordered to be put.

The question then being on the adoption of the amendment of the gentleman from Salem, (Mr. Lord,) to the first resolve, it was taken, and decided in the negative.

So the amendment was rejected.

The question recurred on ordering the resolves, as amended, to a second reading, and being taken, it was decided in the affirmative.

On motion by Mr. EAMES, of Washington, the Convention then, at seven o'clock, adjourned.

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THURSDAY, July 28, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

*Reconsideration.*

Mr. WHEELER, of Lincoln, moved a reconsideration of the vote by which the resolve on the subject of Imprisonment for Debt, was passed.

The PRESIDENT. The motion will be placed upon the Orders of the Day for to-morrow.

Mr. WHEELER. I should be glad to have the rule suspended, so that the motion may be placed upon the Orders of the Day for to-day.

The PRESIDENT. The rule may be suspended so that the motion may be now considered, but the Orders of the Day are already made up.

Mr. WHEELER. I would prefer that the matter should be considered in a full house.

Mr. WILSON, of Natick. I move that the rule be suspended so that the motion may be considered at this time.

The motion was, upon a division—ayes, 80; noes, 22—decided affirmatively.

The question recurred upon the motion of the gentleman from Lincoln, to reconsider the vote by which the resolve on the subject of imprisonment for debt was finally passed.

Mr. BRIGGS, of Pittsfield. I suppose the object of the gentleman who moved the reconsideration, is, that it shall go upon the Orders of the Day, for to-day, somewhere, so that it may be considered when the house is full. I hope it will not be considered now, and I suggest that it be placed last on the Orders of the Day for to-day.

The PRESIDENT. If no objection be made, it will be so disposed of.

No objection was made.

On motion of Mr. WILSON, of Natick, the Convention proceeded to the consideration of the Orders of the Day, the first item being the resolve on the subject of the

*Rights of the Jury.*

The question being on its final passage,

Mr. GREENLEAF, of Cambridge. I would not trouble the Convention, if I did not think that the operation of this resolve is probably misunderstood. If I am wrong, I can be easily set right. I understand it in terms to go to this extent: The jury in all criminal cases are to be judges of the law as well as the fact. In all criminal cases, the jury will only have the power of rendering a general verdict. The verdict is either guilty or not guilty, and in saying guilty or not guilty, they pass virtually upon the law as well as the fact. But, now it is proposed to give to the jury power, by the organic law, to be the final judges of all questions of law in criminal cases. When they go in favor of the accused, whatever right they have to ask for a new trial, they never exercise it, at least it never has been exercised. It may be considered now as gone entirely; it gives no new trial to the Commonwealth when the prisoner is acquitted. If he is convicted contrary to law, if convicted against the weight of evidence, so glaringly so that it would lead the mind irresistibly to the conclusion that the verdict was wrong, a new trial may sometimes be obtained. But, suppose the prisoner happens to be convicted contrary to law, and suppose he is an unpopular man; suppose he is on the unpopular side in politics; if you make the jury by constitutional provision judges of the law and the fact, the verdict can never be set aside. Never.

Now, the question is, whether the Convention is ready to do this. Every man has some legal right or other, if only a right to be hanged according to law; but if you transfer the right to judge of the law from the court to the jury, and the jury happens to be hurried away by the current of feeling against the prisoner, he is sure to be convicted, and that conviction is final. The idea of giving the jury, in express terms, the power of judging of the law as well as the fact, probably originated in a misunderstanding, and consequently an abuse of the law of libel; and the impression that some precaution was necessary, has finally acted upon the the mind of the legislatures of all the States of the Union. In some of the States, it is provided by statute, as is the case with our own statute in regard to libel, that evidence may be given of the truth of the words declared to be libellous; but the question is, whether you will retain that power over the subject by making it subject to legislative act, or whether you will put it farther out of your hands until another Convention shall make it part of the organic law? Having stated what I think will be the operation of this provision, I have no farther argument to urge. It does not affect me, personally, any more than it does every other man in the community.

Mr. MILLER, of Wareham. I do not rise to discuss this question, but I desire to express one or two results which this proposition, if adopted, will have upon the trial of criminals in your courts. If the judge charges in favor of the prisoner, it is all very well for the jury. But, if he charges the jury, or in the course of the trial he advises the district-attorney, that the charges are not sufficient to convict the prisoner, the district-attorney can turn round and tell the judge that he is not the judge of the law; that the jury must decide that question. Now suppose a case should occur upon which the community were much excited, and the jury, under the influence of that excitement, should convict the prisoner

against what would be considered law by the best judges in the land; the judge has no right to set aside that judgment.

Again, suppose the judge should charge against the prisoner; and, suppose, in the opinion of all the other judges in the country, he charged the jury wrong; but, suppose that upon that charge the jury should convict the prisoner, there is no way in which that error can be corrected, and the prisoner must therefore suffer the penalty of the law wrongly administered. I hold that the adoption of this principle will have the effect to take away one of the private rights of the individual citizen. It will have directly the opposite effect from that intended by the mover. If it is inserted into the Constitution, its practical operation will be to render the security of every person less safe than it is under the Constitution as it now stands.

I have a word to say in relation to what the law is now. The courts say in their decisions—and it is now the law of the community—that the jury must take the law from the court, but they are not bound by it. They are to consider it as delivered by the court; but still, they have the right to decide the law, as well as the fact. But if the jury convict upon a wrong construction of law, the court has the power to set the verdict aside. It seems to me, therefore, that the community have greater security under the Constitution as it now stands, than they will have under the provision which it is now proposed to adopt. I shall, therefore, for this reason, vote against the passage of the resolve.

Mr. BRIGGS, of Pittsfield. I understand the ground upon which this provision is put, is to increase the security and safety of the citizen. It is said that the courts, even in our country, and in this Commonwealth, are constantly encroaching upon the rights of the jury. I believe one gentleman said, that in this respect, the courts had usurped powers which did not belong to them. Now, I confess, it would be strange to me if this was so. In the name of common sense, what motive is there for the court to intrench upon the jurisdiction or vested rights of the jury? What possible interest or gratification would it be for the court to take from the jury a responsibility and right, which belongs to them?

Sir, the law favors the prisoner, and the courts favor the prisoner. By the present law, every decision of the judge, from the beginning to the end of the trial, in favor of the prisoner, is final. The prosecuting officer may be ever so much dissatisfied with the decision; he may feel ever so strongly that the judge is mistaken, the decision is final, and cannot be appealed from. Yet, if the judge, during the progress of the trial, makes any decision against the prisoner, the prisoner's counsel has the right to object to it, and he has the right to appeal to the highest judicial tribunal in the Commonwealth, to test its correctness. If in charging the jury, the judge charges in favor of the prisoner, and the jury acquit him, that is the end of the matter; but, if the judge charges them against the prisoner, and expounds the law wrongly, and upon it they convict the defendant, exceptions may be taken, the matter tested before the highest judicial tribunal, the error corrected, and the prisoner allowed the benefit of another trial. So that gentlemen must see that under the present law, everything goes to assert and carry out that great principle of humanity, as well as law, that every person is deemed to be innocent until proved to be guilty. That is the law of the land.

There is one instance upon our records, within my recollection, where this scrupulosity of the court, in allowing the verdict of the jury to be set aside upon a mere technicality, which could not, of itself, be of the slightest importance; but, by means of which, the prisoner saved his life.

Forty years ago, in the county of Hampshire, a man was arraigned and tried for his life. He was convicted, but the verdict was set aside, upon the ground that he was not properly arraigned. The law required that a criminal indicted for a capital offence, should be arraigned and put to plead before a full court. A full court were in session in Northampton; but, on the morning before they had assembled, one of the judges went into court, the prisoner was brought to the bar, and plead not guilty. At a subsequent term he was tried and convicted; but, after the conviction, a motion was made to set aside the verdict, because he was not arraigned before a full court. That great man, and distinguished jurist, Chief Justice Parsons, in giving the opinion of the court, said everybody could see that it was perfectly immaterial to the prisoner, in a matter like this, whether he was placed at the bar and said, not guilty, before one judge, or before a full court. The objection made was a mere technical one—a mere legal quibble; "but," said he, "a man has a right to quibble for his life." They set aside the verdict. A new jury was impanelled, a new trial was had, and he was acquitted.

I name this circumstance to show how careful the courts are of human life, and human liberty. So it was then, and so it is now.

Now, will this alteration—will the incorporation into the Constitution, of the principle that the jury are to be the ultimate judges of the law as well as the fact, increase the security of liberty

and of life? As it is now, if the judge gives the wrong law, and the jury convict a man upon it, a new trial is granted. If in a criminal trial the jury are wrongly instructed in the law by the court, and the prisoner is convicted, he has a remedy. I will not go into a discussion of the question, of which—all things considered—is the most likely to judge rightly, the judge upon the bench, or the jury summoned to the jury-box to sit for eight or ten days, to decide upon the facts of the case.

It must be admitted by every one, that there are in every community, subjects more or less exciting, which will extend even to the jury-box. Now, whatever the subject may be, if the excitement in relation to it is general, if it pervades the community, it will mingle itself with the discussion of the jury-room, and will have more or less influence upon the minds of the jurors. It is no implication upon the fairness or honesty of jurors, to say that they are subject to be influenced in their opinions like other men. I ask the question, which is the safest for the community or for the individual, to have the judge upon the bench, under his responsibility, the supervising power, to lay down the law to the jury, and for them to take it from him, and then to decide the law and the facts, or for the jury to take the matter into their own hands, and decide for themselves, what is the law of the Commonwealth? Take, for instance, the all-exciting subject of the license law. There has been great difficulty in various parts of the State, under the existing law, in getting verdicts, because the juries are divided in opinion as to the character of this law. Now, suppose you make them the ultimate tribunal to settle the law, and indict men for its violation; let the counsel for defence defend the prisoners, as they will defend them, and as their zeal and ardor are awakened, and all their energies put in requisition, they turn from the bench to the jury—to those twelve men as the judges of the law—do you suppose they would be very likely to give a unanimous opinion upon that subject? I apprehend, if this amendment prevails, you will have very great difficulty in obtaining a concurrence of twelve minds in favor of the validity of your Maine law.

But, after all, my great objection to this amendment is this: you may calculate to an absolute certainty, that in a large number of cases, whether one in fifty or one in a hundred, I will not undertake to say, the jury will mistake the law, the prisoner will be improperly convicted, and he will have no remedy; you will have no means of carrying out that wise and humane maxim, that it is better to allow a hundred guilty men to escape, than for one innocent man to be punished. Having reference to this great principle, I ask if there is not danger of losing much, and doing great wrong, by making this change.

Then, again, what do you do to the judge? You take from him all responsibility. He can only say: "Gentlemen of the jury, my opinion of the law is this; but whether it is law or not, you are to settle." He cannot instruct them, they are to settle the matter, and whether they settle it right or wrong, there is no remedy. It seems to me that it is not the part of wisdom to adopt such a provision.

Mr. HUNTINGTON, of Northampton. I now offer the amendment which I should have offered yesterday, if I had not been cut off by the previous question. I propose to add at the close of the resolve, these words:—

But it shall be the duty of the court to superintend the course of the trial, and decide upon the admission or rejection of evidence; but upon all questions of law arising during the trial, upon collateral or incidental proceedings, to allow bills of exceptions.

I conceive that leaves the law where it stood previous to the decision in the case of the Commonwealth *vs.* Porter. I conceive that the provision reported by the Committee is liable to miscontruction. I have, therefore, proposed this amendment for the purpose of reducing the law to where it stood before the decision was made which may be found in the tenth of Metcalf, as decided by Chief Justice Parsons, and other judges of the supreme court. I think, in a case reported in the tenth of Metcalf, a judge changed the law, and that decision has never been set aside.

I believe all legal gentlemen will agree with me, that taking this resolution as it now stands, and construing it in the bold manner in which it recites its provisions, the court may say to the counsel for the defendant, in relation to any motion that may be made to set aside the verdict, or the ruling of the court: "The jury have passed upon that, and their decision must be final." For instance, a man is indicted before one of your courts, the court gives its ruling on the case, and the jury decide upon his guilt or innocence, and, by their verdict the defendant is found guilty. The defendant then proposes to the court to allow exceptions to his ruling, but the court—a common pleas judge—will reply: "No; look at the Constitution. The Constitution declares that the jury shall determine the law and the facts of the case, you are not entitled to your bill of exceptions. I do not know whether the jury took the rulings of the court or not; they are the power to

decide. It is of no consequence what were my rulings. The jury are to decide upon all matters of law and evidence. I do not know whether they followed my instructions or not. You are not entitled to a bill of exceptions." That will be the result, and the defendant cannot help himself. The jury may have erred in their construction of the law; and yet, as was stated yesterday, upon that construction, they may have sent a man to State Prison for life; for, as has been said, the question of what the law is, must depend upon the construction of twelve men.

Now, Sir, all I propose to accomplish by this amendment, is to bring the law back to where it stood previous to the decision in the case of the Commonwealth *vs.* Porter. I do not propose to change the principle. This is all I propose to accomplish, and, in the opinion of several gentlemen who are friendly to the resolution, and who have seen my amendment, it is what it is desirable to accomplish. It is to assert the rights of the judge as well as those of the jury. I do not understand the member for Wilbraham, (Mr. Hallett,) to advocate the right of the jury to decide upon the law and evidence in every case. It very often happens, in the course of a criminal trial, that evidence is introduced for a certain purpose; the court tell the jury they may receive and consider this evidence for one purpose, and reject it for another purpose. Now, as this resolution stands, if the court were to instruct the jury in this manner, as soon as they retire to their room they may say: "We are the judges of the law and evidence, and although the court chooses to rule out this evidence, yet we have the right, under the Constitution, to consider whether we will admit it." They may admit it, and thus a man may be convicted upon hearsay evidence.

Again, there is a disposition upon the part of the court, sometimes, to avoid responsibility. Practitioners before your courts well know that it is very often not with willingness, that the judges make judicial decisions. And if you incorporate into the Constitution this resolve, as it now stands, you will provide a means by which a judge may at any time shirk the responsibility of any decision, by saying that the Constitution has given the law to the jury.

It will make the judges careless in relation to their instructions to the jury, and negligent of the whole of that responsibility which rests upon them, by virtue of their office. They should discharge all the duties prescribed in the resolution. Now, they rule upon evidence, and determine as to the sufficiency of an indictment. Why, Sir, suppose a man is arraigned for a crime which may send him to the State Prison, and the defendant says the indictment is not sufficient; the court passes upon the indictment, and rules it to be sufficient, and the trial goes on, and the jury find their verdict of guilty. Or they go to their room and examine the case, and they say: well, the court, to be sure, has ruled this indictment to be sufficient, but we have a right to determine the law of the case, and that involves the sufficiency of the indictment, and questions of evidence; and as the Constitution provides that we shall determine all the law in this case, though the court has ruled that the indictment is sufficient, we, or one man of us, may determine that it is not sufficient. Thus the prisoner may be discharged. As it now stands, the question is in the power of one single man upon the jury of twelve men. I think that is going too far. I know that the gentleman who drew this resolution did not intend any such result as that, and I submit whether the amendment does not place the law as it always has been, from the foundation of our government down to the time of the decision of the case of the Commonwealth *vs.* Porter.

Mr. TRAIN, of Framingham. I desire to say a few words upon this proposition—not to discuss it, for it cannot be discussed within the time allowed to a single speaker, or to the Convention, with anything like the degree of care which its importance demands. In my judgment, it is a proposition which is more vital to the interests of the people of Massachusetts, than any which has been discussed in this Convention, and I desire to speak of it for a moment, with reference to no other object than simply to ascertain what is right. Suppose that we were now for the first time establishing a tribunal for the trial of persons charged with the violation of law,—for the first time to define the powers and duties of the court, and the rights and powers of the jury; if we wished to contrive the best mode by which truth should be ascertained, and the right and wrong determined, how would we go to work to do it? Trial by jury is a human invention, which has been perfecting itself for more than six hundred years; but assume now, that down to this morning, juries have had the right to find the law as well as the fact, in criminal cases, I beg the Convention to consider a moment if that is the best way.

Now, Sir, I do not purpose to go into the inquiry, so largely discussed here, whether juries have heretofore had the right, or not; because upon the best consideration I have been able to give the subject, I believe that the rights of prisoners and the security of human life and liberty, under our organization of society and government,

require that the powers to ascertain and declare the law should be vested in a different portion of the tribunal than that which is to ascertain the facts; the one should be the peculiar province of the court—the other, the peculiar province of the jury. I do not agree with the gentleman from Northampton, as to the effect of his amendment upon the decisions of the courts of this Commonwealth.

"Can it for a moment be contended that twelve men in a jury-box, are to determine that not to be an offence, which the law under a penalty forbids? May they pronounce that to be manslaughter, or justifiable homicide, which the law declares to be murder? If so, then they may by their verdict abrogate, by rendering ineffective, every enactment of the legislature, and they become a court of appeal." The legislature enacts the law of the Commonwealth, and you place the power in the hands of every man in the jury-box to abrogate every enactment of the legislature, and the power which you have vested in the legislature. All that power may be thrown away, and the most sacred rights sacrificed, at the will of any one man, whose name you have authorized to be placed in the jury-box. That is the proposition.

Now, when gentlemen say that the decision in the case of the Commonwealth *vs.* Porter was wrong, I do not agree with them, because I understand that the jury have the power now—and they may have had the right—but I understand the court to have said, that juries have the power but not the right. So has the judge the power to give judgments contrary to law, if he chooses to disregard his oath. And so have the jury the power to return a verdict contrary to the law, if they choose to disregard their oaths. So that while I hold they have the power, they have not the right, and if they have the right, that right should be taken from them; because I say that the security of the prisoner, and security to liberty and life, require that the power to pass upon the law should be vested in a tribunal where a revision may be had, so that the law which is a science, shall be administered uniformly throughout the Commonwealth. So that what is my right in Middlesex, shall be the right of my neighbor in Suffolk.

No useful analogy can be drawn from the administration of law on the other side of the Atlantic. The distinction is broad and deep. There, the sheriff impanells a jury of *his* choice, and he is, or may be, the corrupt servant of the crown. Here, the jury is selected by lot, in a manner enabling us to secure a tribunal "as impartial as the lot of humanity will admit." There, by the constitution of the tribunal, the whole power of the crown may be brought to bear directly upon the prisoner, as the crown creates the tribunal that is to try. Here, the government has the same control over the tribunal that the prisoner has, and no other. If our judges were the corrupt tools of a tyrant, then the juries should be judges of the law as well as the fact. When judges take a stand for the rights of the crown, against the best interests and liberties of the people, then juries should stand between the crown and the people, for the protection of the latter. Here, the people are the crown, and the judge stands between the people and the prisoner, the maxim being "that the judge is counsel for the prisoner"; and the safety of the prisoner, and the rights of the people, are alike preserved. No power is, or can be, brought to bear upon the prisoner, save the power of the law, symbolized, and acting by the court. Our tribunals represent simply the people as a Commonwealth, seeking to preserve itself by preventing the commission of crime on the one side, and the prisoner defending himself, under the Constitution and laws, as one of the same Commonwealth, on the other; while the judge is alike independent of either, and sits between the people on the one side, and the prisoner on the other, that the rights of both may be preserved.

Now, upon the proposition which is offered here, you take the whole power of the Commonwealth and place it in the hands of twelve men in the jury-box, who are to pass upon the rights of the prisoner—and the prisoner has no protection against the popular will—you take from him all the protection which we can afford him, namely, the right that the jury shall take the law from the court. So far from enlarging the rights of the prisoner, you are seeking to limit and control them.

Now it seems to me, and I speak as a lawyer, that if we were now about to establish a legal tribunal, we should so create it that the court and jury should be independent of each other, each in its own department, the court declaring the law, and the jury declaring the facts. Then if the court is mistaken in the law, the supreme court will revise and correct the error—if the law itself is wrong, the legislature will set it right by a new enactment. If you place this power in the hands of the jury, they make the law in every given case; and there can be no mode devised, notwithstanding I defer to the opinion of the gentleman from Northampton, by which a prisoner can be redressed for any injury he may suffer from a wrong verdict. I can conceive of no mode. The gentleman in the case which he has stated, assumes that the judge has instructed the jury

improperly—then the prisoner may except; but suppose that the judge has given the law to the jury correctly, and the jury, taking the bits in their teeth, have run away with the case and convicted the prisoner, notwithstanding the instructions of the court, what has become of the prisoner then? God help him.

As a prosecuting officer merely, I have no objection to the adoption of this proposition. If prosecuting officers, in the language of the delegate for Abington, are mere legal butchers, who wish only to get verdicts, to bag game, they will not object to it. And I tell gentlemen that the prosecuting officers can get more verdicts, if you will remove the judge from between the prosecuting officer and the prisoner, then they can get now. Many a prisoner has escaped upon technical grounds, when, if the jury could have had their way he would have been convicted and punished for the commission of a crime; and yet no one would desire to have the law different in that respect.

One word more. I do not think appeals should be made to the Convention upon this proposition, as though it were a political matter, or that an effort should be made to array one portion of the people against another portion. This proposition does not affect "the craft" to which I belong.

The delegate from Lowell (Mr. Butler) very craftily called the attention of the Convention to the fact that "the craft was in danger," as he said. Sir, it is not so; adopt this proposition in your Constitution, allow the lawyers to argue the law, as well as the facts of every case to the jury, and you will increase their income thereby fivefold. Every case will then be argued, however clear it may be, upon the hope that out of twelve men one fool can be found upon the panel. So far from the profits of the craft being diminished by the adoption of this proposition, they will be increased most substantially; and so far, with the fellow-feeling which I have for my brethren, I have no objection to it.

But when the gentleman from Lowell was quoting Scripture, I could have pointed him to a record where the jury were judges of the law and of the fact; where, when the judge washed his hands before the multitude, saying, "I am innocent of the blood of this just person," the jury said, "Away with him! away with him! Crucify him! crucify him!" and that jury passed upon the law and the fact.

Sir, I do not wish to see in Massachusetts a tribunal created where the rights of my fellow-citizens will be affected by every popular breeze.

The courts of Massachusetts are the only tribunals which stand unaffected by the popular will. Let your juries become judges of the law and the fact, and every man is tried by the popular impulse, and no man is secure in his rights. If offences in Massachusetts were merely political, there might be some show of reason in this proposition; but then, in times of great excitement, juries would exercise the power, whether they had the right or not.

These are, very briefly, my views in regard to this matter. I only regret that the subject cannot receive the consideration which its importance demands.

Mr. RANTOUL, of Beverly. I have listened to the arguments of the learned gentlemen who have spoken this morning, and I am more and more convinced of the necessity of having this amendment made in the Constitution. I think that gentlemen uniformly agree that the ancient right of jurors was to judge of the law as well as of the fact. No one of them has argued that this was not the ancient law of the country, from time immemorial, up to about fifteen or twenty years ago. Within that time, it is understood that there has been an attempt, on the part of the court, to usurp what was the ancient right of the jury—that is, they have undertaken to say that jurors had not the right to judge of the law, but merely had the power to judge of the law. Up to that time, I believe, the question was not raised but what the jury had not only the power but the right. This amendment of the Constitution which we propose, merely recognizes the rights of jurors as they existed previous to this innovation. I therefore hope that we shall adhere to the vote we have already passed upon this subject.

In respect to corruption and mistakes on the part of juries, those who are conversant with the matter could state some things with regard to the judges. Judges sometimes make mistakes, and are sometimes corrupt. Lord Jeffreys was corrupt, and if the jury had the independence which belongs to them, and could have exercised it, there would not have been the blood shed which there was shed under his administration. But the juries had not the independence to carry out their legal rights, and interpret the law according to their own view of it, rather than according to his ruling.

Lord Mansfield was not a corrupt judge. He undertook to usurp the rights of the jury with regard to a prosecution for a libel. He undertook to direct the jury that they had no right to inquire whether the person charged with the libel published the libel. That was considered so flagrant an infringement of the rights of the jury, that parliament made a law to remedy that particular

branch of jurisprudence. But no man has claimed that the judges in this Commonwealth ever exercised such a power until within the past fifteen or twenty years.

I recollect a trial in Essex County, in 1805, when the court was held by a majority of the judges. I remember very well that the facts of that case were proved to the satisfaction of everybody; there was no question about the facts, but the issue was about the law. The judge instructed the jury with regard to the law; the jury retired upon that, and a certain portion of the jury held that the court had laid down the law different from their judgment of the law. They accordingly opposed a verdict—the jury did not agree—and they returned to court and reported that disagreement. The jury were then discharged, and the court never intimated but that the jury had the right, as well as the power, to consider the law. That case, I believe, was tried three times in the county of Essex, and no jury could be found to agree with the court on points of law. There was always the power to decide for themselves, and these juries exercised it, and resisted the decisions of the court, until finally the prosecutor concluded to give up the case. I mention this to show, that in 1805, within my own knowledge and observation, the court did not pretend to say to the jury that they had no right to judge with regard to the law. The court instructed the jury that they had a right to consider the law, as well as the facts, and bring in a verdict according to their views of the law and the facts. I mentioned before, the case of Judge Chace, who was tried upon impeachment. He was charged with interfering with the rights of the jury with regard to the law, and he denied the fact, and was acquitted of the charge. He not only denied the fact, but, in his reply to the impeachment, he also argued that it was the ancient right of the jury to judge of the law as well as of the fact, and he considered it a sacred right which ought not to be interfered with by the court. So late as the year 1805, we have the opinion of a majority of the supreme court of this State; and in 1802 or 1803, we have the opinion of a learned judge of the supreme court of the United States, to the effect that the jury had this right; and there was no question upon the part of learned men, that they had not only the power, but the right, to give a verdict upon their own views of law and the facts of the case. In addition to this, I may say that a very considerable number of the States of this Union, who have lately revised or adopted Constitutions, have introduced into them this very provision. They probably had the same apprehensions that we have reason to entertain; and, for one, I certainly have greater reason to entertain those apprehensions now, than I had when I came here. There is reason to fear lest the ancient rights of juries might be usurped by the courts; and therefore we ought to guard against it. In a great many of the States they have already introduced such a provision into their Constitutions, and I hope we shall introduce it into ours. I do not understand any of the gentlemen who have spoken, to deny but what this was always the law until very lately.

Mr. CHANDLER, of Greenfield. Every vote which I give in this Convention I want to give intelligently, but I am not prepared to vote intelligently in the affirmative on this proposition. I rise for information. I am not discussing the subject as a lawyer; I am not discussing it as a politician; I look at it simply with the idea of a country farmer; as a plain man who makes pretensions to a little common sense, but who claims, by no means, to be overburdened even with that. If I understand anything of the duty of a juryman, it is to take the law as his rule, apply it to the conduct of the prisoner at the bar; and then, by a careful comparison, to judge whether the man is guilty or not guilty. This, I suppose, is universally admitted; and this being admitted, I ask now, where am I to obtain my rule? Where am I to obtain that knowledge of law upon which I can rely, so as to use it without hesitation as the rule by which to judge of that man's conduct? This is the information which I want, and I have waited here and listened with great anxiety, to have the learned gentlemen who have spoken upon this question, tell me where I shall obtain that knowledge of law that will answer to rely upon in this case. I go into the jury-box ignorant, both of the law and the facts—I have them both to learn in the court-house. The facts I am to learn from the witnesses, and the law I am to learn from some other source. Whence am I to obtain it? Am I to look to the judge for it? If I take his positions, and apply that law to the conduct of the man, I am not in that case a judge of the law, but a doer of the law only, as I have always endeavored to be. But, if I am not to take my rules of law from the judge, am I to take them from the counsel? They are of opposite sides and different intellects. It certainly would be no more safe, as a general rule, to look to the counsel, than it would to look to the judge. But, suppose I do take my view of law from the counsel and apply it; that is not judging the law, but only doing what I suppose the law requires. I want to inquire again, what kind of a judgment it is that I am to have upon the law? Am I to

judge whether the law, as laid down by the judge or the counsel, or by whoever I look to for information, is the law applicable to the case? How am I to obtain this information? The judge has told me that the law is so and so; and he, perhaps, to obtain his information, has gone through a hundred volumes of statutes, and I know not how many volumes of precedents and reports. Can I be expected to know more than the judge? Can my general information upon the subject of law, be supposed to render me capable of sitting in judgment on his opinions, and forming an idea superior to his? That would be becoming a judge of the supreme bench. Or am I to judge of the question whether the law by which this man is tried, is a wise and good law or not? Am I, in a word, to take it upon myself virtually to repeal all the laws that have been passed by the legislature, after the most full discussion and mature deliberation, which I do not like? Mr. President, I want information upon these subjects, and I would beg learned gentlemen to enlighten me as to these points; and then I shall be able, and not until then, to give a vote satisfactorily to my own mind; for though I claim all the privileges of a full blooded Yankee, yet I am so nearly allied to the aborigines of the country, that in a matter of such importance as this, I do not love to guess.

Mr. HALLETT. I wish, with the consent of the mover of this amendment, to add two or three words to it, which I deem important. I have, myself, the fullest conviction that the original proposition, as it stands reported, is explicit and sufficient; but still, as there has been so much learned ingenuity displayed here, in technical constructions adverse to the rights of juries and parties, I am afraid that there might be the same learned ingenuity displayed elsewhere; and that attempts may be made to evade the beneficial intent of this provision, as there always have been attempts by those in authority to evade or construe away laws which were made for the liberties of the people. Hence, to remove all doubt, I propose to add a clause conferring express power on the courts to grant new trials; because, I do not want a judge to have any ground to say that the jury have settled the law in the trial of a cause, and therefore he will not undertake to grant a new trial upon any law or evidence which they have passed upon and determined in the case. In order to exclude such a possible conclusion, I move to add at the end of the amendment the following words: "And the court may grant a new trial in cases of conviction." This affirms precisely the right which now exists at common law, and by statute, for the court to grant new trials in criminal causes in favor of the defendant, and by so affirming it, all the technical cavils of bar or bench, at the effect of a jury passing upon the law as well as the facts of a case, will be done away.

Mr. HILLARD. We have in our youth read of a shield that was half gold and half silver, and of the two knights who approached this shield from different sides, and fought upon the question whether it was all gold or all silver. Now, this question of the rights of juries in criminal cases, has two aspects, like the shield that was half gold and half silver; and I think that those who call themselves the friends of the rights of juries, have looked at it only from one side. As I have before observed, in the common course of jury trials, in nine cases out of ten, it is not of the least practical consequence which rule or principle you adopt, because there will not be any bias in the minds of the jury which would lead them to call in question the law as laid down by the court. But now and then there is a case in regard to which there is a powerful current of popular sympathy. That current of popular sympathy may flow either in favor of the prisoner or against him. The gentlemen on the other side argue the case on the supposition that this sympathy will be always in favor of a prisoner. They fear that the rule as now laid down in our Commonwealth, will operate to convict a prisoner at the will of the court, against the inclination of the jury. Now, whenever a criminal is brought to the bar, and this public sentiment is strongly in his favor, there is an infirmity in the constitution of jury trials, because, through this popular favor, the law is virtually annulled and set aside. We must take this institution, like all others, with its incumbrances.

You remember that a year or two ago, in London, an assault was made upon Marshal Haynau, by the operatives in Barclay's brewery; and the cabinet of Austria demanded of the British government that these men should be brought to punishment. The answer of the English minister was, if we attempt to bring these men to trial, we must submit their case to a jury of twelve men, in the city of London; and with such a state of public sentiment as now exists, it would be impossible to find a jury in the city of London who would convict them; therefore we must take the institutions of our country as they exist, and act upon them. That was a sensible way of looking at the question; and wherever there is this powerful and overwhelming current of popular sentiment in favor of a man, he never will be convicted, let your laws and regulations be what they may. Take the other case, and see

how it would be with an unpopular criminal; take a man who has been tried and convicted at the bar of public sentiment, before he is put upon the stand; take a man against whom the press has been directing all its powerful batteries; and I submit to men who have had experience at the bar that cases do occur, that when such a man stands arraigned the jury are hungering and thirsting for his conviction, and they stand like greyhounds on the slip, ready to fall upon the prisoner and tear him to pieces. Now what are the functions of a judge—what is it that gives that office its noble and exalted character? It is that the judge, not sharing in the passions of the people, may stand as a breakwater between that man at the bar, and the popular violence which is without; but if you take the responsibility from the judge, and throw it upon the jury—if you make your enactments so that the judge, if he be a timid man, will bow before the current of popular violence, and throw this man wholly into the hands of the jury—I submit, that there is danger that the interests of humanity and justice will suffer from the operation of this principle. This is a danger which gentlemen seem not to have apprehended. It seems to me that they have looked at it only from the other side; and I ask you—as lovers of humanity, and wishing that men should not be tried by public sentiment, but that they should be tried by justice and reason, and should have an impartial tribunal—whether it is not better to give the judge power, in such cases, to stretch forth the helping hand? There is one other consideration that I would urge in relation to this matter. If you make the jury judges of the law as well as of the fact, you increase the evil which now exists; that is, you give a man of talents at the bar an advantage greater than that which he now possesses. I hope my distinguished friend, the attorney-general, now absent, will pardon me if I draw an argument from his case. Suppose the prosecuting attorney to be a man of his knowledge and abilities, of his splendid oratorical powers, but without that moral sense, and tenderness of heart which I know will ever govern him; suppose you have an inferior man, without power or influence, for the defence; they are struggling before the jury, in a case where the life of the prisoner is at stake. The court is perfectly powerless to say how the jury shall understand the law, and it is laid down to them by these two men; on the one side, a man of eminent learning and abilities, not controlled by a moral sense of justice and humanity, and on the other side, a feeble, young, timid, inexperienced advocate—I submit to gentlemen if there is not here an element of mischief which may arise from the introduction of this principle, which, as humane men, we ought to look at? I am entirely in favor of the amendment proposed by my friend from Northampton, and I think it should be adopted; although it will leave a defective principle in force, practically, it will leave the operations of juries very much as they are now.

Mr. MORTON, of Taunton. I have desired to gain the attention of the Convention on this subject, even at this late day of the session, for a few moments only. I have been unsuccessful in obtaining the floor. This, however, is my own fault. I complain of nobody; but the Convention will excuse me, if I relate a short anecdote which this circumstance brings to my mind.

I heard once, of a young, ardent, and eloquent man in the legislature, who was very anxious to speak, and so also were many others, at the same time. At every interval, dozens would rise on their feet, and exclaim, as loudly as their lungs would permit, "Mr. Speaker!" and getting out of all patience at his ill success in one of these struggles, this young man shouted out, "Mr. Speaker! I must have the floor; I have a little speech which I want to get off; I must have the floor, for my speech will not keep." [Laughter.]

Now, I have no such reason as this young man had for desiring the floor. What I have to say is old. The principles I wish to advance, I have entertained for more than a quarter of a century; and on looking at them, I think they are just as bright as when they were new. At any rate, it will do no hurt to give them an airing.

Mr. President: I rather propose to testify on this matter, than to argue, because I take it that the argument has been exhausted, and because, also, there is no time to go into an investigation of the subject. I felt somewhat anxious to express my views upon this question, because I suppose they will disappoint a good many individuals. All my sympathies are with the mover of this proposition; and if I were now placed in the same relation to that gentleman which I have borne to him in times past, I think I should conduct the business very much to his satisfaction, and according to the views which he has expressed. But I cannot but think that some of my friends who are so anxious to protect the rights of individuals and juries from encroachment, in their zeal for liberty, instead of strengthening the guards of liberty have weakened them; and I was sorry, on this subject, to differ from my friend for Manchester, (Mr. Dana,) yesterday; but I could not suppress my apprehension that

his attempt to guard and strengthen the writ of *habeas corpus*, weakened the force with which it has been regarded in the Commonwealth, heretofore. But I must not refer to that subject. Time will not allow me to do so. I fear, however, that this proposition in relation to the rights of juries, instead of protecting and securing the rights of the people, will tend to weaken them, and expose those rights which gentlemen wish to protect, to greater danger than they were exposed to under the law as it existed before.

Mr. President: In relation to what was advanced by some gentleman, yesterday—I do not now exactly remember who—upon the organization of juries, I must say that the provision does not reach it at all. If there is any imperfection in the law, in relation to the selecting or impanelling of juries, or the conduct of the officers in determining who shall sit on a jury, the present amendment does not remedy that imperfection; it does not profess to reach it. Now this amendment relates wholly to criminal trials. And what is the course and progress of such trials, as was very properly asked by my friend opposite, (Mr. ————,) a few moments ago? First, an indictment must be returned by the grand jury. The party is then brought up for trial, and the business of trying him seems to be divided between two classes of functionaries. In the first place individuals are selected to sit upon the bench as judges of your court, for the purpose of determining what the law is, whose duty it is to settle rules for the government of cases that come before them, and to decide upon their application to all the citizens of the Commonwealth. They are supposed to be selected for their integrity and character, and above all, for their knowledge of the law, and their experience in its application. It is supposed that they are to be able to explain the law. Then you have selected another class of functionaries, designated first, by the election of the different towns, and then selected by lot—who are supposed to be somewhat distinguished above their fellows, for their integrity and practical knowledge of the affairs of the world. It is their peculiar province to discern the facts of the case; and it is supposed, from their experience and knowledge of mankind, that they are better qualified to determine what credit is due to witnesses, and what inferences may be drawn from circumstances, than other classes of the community—even than the judges themselves, who, from the nature of their occupation, are somewhat withdrawn from society. The matter thus goes on between these two classes, both hearing the evidence, and the judge explaining the law. Now, how are the jury to determine the guilt or innocence of the defendant? In the first place they have the facts alleged in the indictment before them, and they must determine whether the evidence proves the facts alleged; and, if so, whether the facts, as proved, constitute a legal offence. On that subject they have the opinion and advice of the court as well as the testimony of the witnesses on the stand. They are to view all the circumstances, and to decide upon their own responsibility. If the jury, viewing the disclosures which are made before them, deliberately and conscientiously come to the conclusion that the evidence does not establish the fact, or that the law, though differently laid down by the court, does not warrant a conviction, they must say that the defendant is not guilty, and he then goes forever discharged. They must, of necessity, in returning a general verdict, decide both law and fact. If they disregard the testimony of respectable witnesses, they assume a fearful responsibility. If they disregard the instructions of the court, they also assume a responsibility not less fearful. Now I do not mean to say that the jury have not the power, and the right, or that it is not their duty, if it so happens that in their consciences they believe that they understand the law better than the court, to follow the convictions of their own minds, notwithstanding the instructions of the court, just as it is their right, upon receiving the testimony of the witnesses, to say according to their honest convictions that they believe, or do not believe it.

Now, in this state of the case, can we do anything to protect the rights of juries, or, more properly, the rights of individuals who may be brought before juries? I have no disposition whatever to impair or weaken, in the slightest degree, the rights of either of these classes of people. I would rather say, let them be preserved, to the fullest extent. But I would ask, whether this attempt to go into this matter and specifically enumerate and define the relative rights of these officers, does not endanger if not impair the rights of juries, or of those persons brought before them? This subject has been so fully argued, that I do not propose to go into much discussion of it. It is always dangerous, where you have general principles laid down and well established in the minds of the community, to reënact them, or to draw them out into detail; for whenever you undertake to do anything in detail, there is great danger that your details may leave some particulars unenumerated, and the omissions may necessarily lead to constructions less favorable than the principles would warrant. *Expressio unius exclusio alterius.*

Now, I maintain, that the principles I have

announced are not only well established, but that they are guarded, and protected, and fortified, by the well-established law, and in the minds of the community, more strongly than they can be by any constitutional provision. If any one entertains the apprehension or the supposition that your courts are desirous of exercising arbitrary power, this is one of those cases in which they never can do it successfully. You have now intelligent and independent juries, who will always take care to protect their own rights; and a court can never control them. If a jury chooses to say that a man is not guilty, whether upon their construction of the law or the evidence, no court has power to reverse their decision. You have, therefore, in the very nature of the principle, a guarantee stronger than you can obtain, either in a Constitution or anywhere else; because, from the very nature of things, this power never can be usurped by a court, and taken from a jury. It is impracticable to do so; and, in this connection, let me say, that we came here, in the first place, to remedy existing evils, not to speculate in theories, or to mould a new Constitution upon favorite schemes, which we may adopt, and which may appear well upon paper, with a design to supersede principles which have always operated well. Such would, indeed, be a dangerous experiment.

Let me now inquire, if anybody ever knew an instance in which any court, having common law jurisdiction, ever attempted to prevent a jury from deciding a criminal case by a general verdict of guilty or not guilty? It is said, that on examining the principles which our courts have laid down, some propositions may be found which are not sound; but, without inquiry into this matter, I wish to ask, whether, practically, there ever was an attempt, by any court, to interfere with a jury, or to deny to them the right of rendering a verdict of "guilty," or "not guilty," according to their discretion? No doubt the court have laid down the law, and given instructions to them; and, according to the provisions of this amendment, they are required to do so. No doubt the court have laid down the law, and the jury have passed upon that law as they have thought proper. No doubt, in all cases, they have respect for it, just as they have respect for the testimony of unimpeachable witnesses. They have the power and the right to act according to their own conscientious convictions, and the court cannot control them, and never has attempted to control them. I think that some complaint was made in regard to a judge in one court, by a gentleman who has advocated this proposition very ably; and it is possible that he might have been treated improperly; but that should not affect a general principle. I believe that he desired to address the jury in regard to the constitutionality of some law, and the judge demanded that he should address the court, and not the jury.

[The fifteen minutes having expired, the hammer fell.]

Mr. DANA, for Manchester. I wish the attention of the House for a moment or two, in relation to this subject. I will first ask that the resolution and amendment may be read, so that we may see exactly where we stand.

The resolution and amendment were accordingly read by the Secretary.

Mr. DANA. Perhaps before we get much farther there may be some more amendments accepted. I wish to put this to the Convention, as an argument for dropping the whole matter. Several days ago, the gentleman for Wilbraham came forward with a resolve materially affecting the life, liberty, and property of every citizen in the Commonwealth. It is presented, and laid upon the table for some time. Then the gentleman makes an argument in its favor, and is perfectly satisfied that it is all right. This morning the gentleman from Northampton comes in and says that he is in favor of the principle, but that you cannot pass the resolves, because juries will be made judges of the sufficiency of the indictment, of the admissibility of testimony, and of collateral issues, and of all that occurs in the course of a trial. He moves an amendment in four or five particulars, and the gentleman for Wilbraham at once accepts them all; and then the resolve is discussed; and then the gentleman for Wilbraham comes forward with another amendment, and says we ought to provide for a new trial; and then the gentleman from Northampton accepts that amendment; and so we go on.

Now, let me suggest that this resolution is on its final passage, and when it is passed, somebody may rise and say that there is occasion for another amendment. But it is then too late. Sir, the very first decision of any court will show that something has been overlooked, and you cannot then help yourselves. And what excuse can you give to the people? We may say that it came up at the end of the session, and that we had not much time to consider it; that we had the fifteen minutes' rule; that amendments were proposed on one side and on another side, and that we had not time to consider them properly. Then the people will say: "If you had not time to consider the matter properly, why did you not leave it to stand as it was?" And to that there can be no answer. Now, I submit to the Convention, whether it is worth while to place a great fundamental principle in the Constitution, affecting life

and liberty, where it is unalterable, with amendment upon amendment, relating to the sufficiency of testimony, to collateral issues, and many other matters, the meaning of which a large portion of the assembly does not understand, and the effect of which I do not pretend to understand at this moment? I cannot bring my mind to see what effect the amendment of the gentleman from Northampton will have on the amendment of the gentleman for Wilbraham, or the amendment of the gentleman for Wilbraham upon his own resolve or upon the amendments of the gentleman from Northampton.

We have the evidence of the learned gentleman from Taunton (Mr. Morton) against this resolve; and if the gentleman from Lenox (Mr. Bishop) was in the House, I would appeal to him to give his testimony, as I have no doubt he would, against it. I submit to the House that we had better drop the matter altogether. It was said, and properly, by the gentleman from Boston, (Mr. Hillard,) that if the government, as it always is, be represented by a man of superior talent and of great power over the jury, and the criminal, as is too often the case, is represented by any young man who is willing, or is appointed by the court, to take it in hand, what chance has the criminal? This very morning, Mr. President, I met a young lawyer, who told me that he had been assigned to defend a man on trial for murder, against Mr. Choate as prosecutor,—the man not having a dollar to pay for counsel,—and asked me if I would consent to act as senior counsel. Now, I should like to know what kind of a chance the criminal stands of his life—hunting up charity counsel, against the head of the American bar, before a chance tribunal. The jury being the judges of the law, if the man is found guilty he never can know—to use a popular phrase—"what hurt him," whether it was the law or the facts. The jury cannot give their reasons, and cannot make known whether they found him guilty because of the law, or the manner in which they interpreted the law. You will have no settled law. There will be one law for one man, and another for another. A law will be constitutional for one man and not for another; and, what is worse, no man will ever know on what ground he was convicted or acquitted.

I say, as I had the honor to say yesterday to this Convention, that the division of power is the great security for liberty. I would not give the best court in Christendom power over the law and the fact, in jury cases. I do not wish to give to any twelve men who may be drawn, absolute power over the law and the facts. My security is in the distribution of power. Give me a court which shall be responsible for the law, and give me a jury responsible for the facts, and for the application of the law to the facts.

There is another consideration. If the judge errs in the law, you have a perfect remedy. You may go to the highest tribunal of the State, and set it aside. If the jury err in the law, you can never disturb the verdict—because you cannot know whether they err in the law or not. I put this question to the gentleman from Northampton, who says there should be the power to grant new trials: suppose the judge rules all the law in favor of the criminal, how shall he get a new trial? The supposition seems to be, that the judge rules against the prisoner; but suppose he rules in his favor, and the jury differ from the judge, the prisoner cannot get a new trial, because all the law was ruled in his favor. But, says the criminal, the jury found the law against me. The judge says, how do you know that? He cannot know it; no man outside of the jury-room can know it, for the jury do not tell how they found the law. So that if the jury differ from the court, against the prisoner, he cannot get a new trial.

Then, by this principle, you put the whole criminal law of the Commonwealth into the hands of one juror. One man out of twelve in the jury-box, has a right to defy the whole Commonwealth. You may pass law after law, but if an ingenious advocate can persuade one man on the jury into a misconstruction of the law, he can set the Commonwealth at defiance. But, if the judge make a mistake, you can correct it. Let me call attention to one protection which you will remove, if you adopt this resolve. The gentleman from Taunton, (Mr. Morton,) was perfectly right in saying that you are breaking down the safeguards of the accused person. If the judge err in the law, it is a matter of record, and you go to the higher court and get it reversed. Suppose they refuse to reverse it? Then you come before the legislature, and, if the judgment has not been executed, the legislature may repeal the law. Or, if you have been sentenced, the legislature may reimburse or reinstate you. Then, again, if convicted on an improper construction of the law, the government can protect you by a pardon. I was counsel in a case where the government pardoned a man upon that ground, and I beg the attention of the Convention to that single case. I defended the man, and the jury put a question to the court, as to the burden of proof. The court were divided upon the subject, but a majority of them were against the prisoner, and he was convicted. That was a matter of record. The case was presented to the governor, and he said, that as the court were divided as to the law, the man ought not to be

hung, in so doubtful a case. The court also requested the governor to commute the sentence, because the law was so doubtful. Now, had that taken place in the jury-room, it never could have been legally known on what ground the man had been convicted, whether on the law or the facts. As the law now is, the grounds of acquittal or conviction appear on record, so that if unjustly convicted you appeal to the higher court, or to the legislature, or the executive, and the court, or the legislature, or the executive, may reverse, or pardon, or reimburse or reinstate the man. But what comes from the jury never can be known.

Mr. HALLETT. I desire to ask the gentleman if he means to say that the court cannot grant a new trial, when the verdict is guilty?

Mr. DANA. I said nothing of the kind.

Mr. HALLETT. Does the gentleman mean to say that the court cannot grant a new trial, when the verdict is "guilty," the charge of the judge being in favor of the prisoner?

Mr. DANA. If the court rule all the law in favor of the criminal, and the facts are sufficient to warrant a conviction, and the jury find him guilty, he cannot, under that resolve, have a new trial, because the court cannot know how the jury found the law.

Mr. HALLETT. Is not the petty jury sworn to decide the cause according to the evidence, and is not the law a part of the evidence as well as the facts; and, therefore, cannot the judge give a new trial, on the ground that the case is against evidence, or against the law, without specifying either?

Mr. DANA. I am glad that the gentleman has put the question, for two reasons: it suggests another infirmity in the resolve, and that is, that it makes the law a matter of fact, which has to be proved as a fact. Now I should like to see all the law of the Commonwealth proved, as a matter of fact, before a jury. We shall continue finding difficulties. But let me answer the gentleman's question by putting another; does he mean that a judge shall set aside a verdict in a criminal case, because the jury, in his opinion, probably erred in the law?

[Here the President's hammer fell, the fifteen minutes allowed for speaking, having elapsed.]

Mr. ABBOTT, of Lowell. I desire to say a few words upon this matter. I must say I am somewhat surprised at the kind of argument used by the gentleman for Manchester, (Mr. Dana,) the gentleman from Boston, (Mr. Hillard,) and others who oppose the passage of this resolve; and, Sir, I think in the history of all the discussion upon this matter, it will be the first time you ever heard arguments against the adoption of this great principle, in criminal trials, on the ground that it was something which would trench upon the rights of criminals. From the beginning to the end of this discussion, it has been claimed by those in favor of the right of criminals, of persons accused of the commission of offences, that it was the great shield which was to stand between him and an unjust conviction. But, Sir, I do not believe it will ever be heard here, or anywhere else, in practise, that any man when brought before any court, will complain of this Convention, or any body which establishes the great principle, that the jury, by the common law, are the judges of the law as well as evidence. But it is claimed that we must pause, because we cannot tell what may be the operation of this resolve; that a variety of objections may hereafter be raised to it. This argument of my friend for Manchester, (Mr. Dana,) might just as well be brought against almost everything which we have attempted to do here. Here is a great principle, he says, which you propose to establish now, and do you know where you are going, what will be the results, and what objections can be raised? Sir, may not the moon be proved to be made of green cheese? Cannot my friend tell us what those objections are, if they exist? It is not a new question. It has been discussed year after year, and my friend has had his opinions upon the subject, and we have all had our opinions upon the subject, and if there is any objection to this matter, the gentleman for Manchester could state those objections to the Convention, if they are real, and I apprehend that a good many that are not quite so real could be made to appear plausible. Will any man be frightened from his consistency, because he fears that there may be some trouble arising hereafter? The amendment of the gentleman from Northampton, (Mr. Huntington,) as modified by the amendment of the gentleman for Wilbraham, covers all manner of difficulties, and if it did not, the learned gentleman from Taunton, (Mr. Morton,) the gentleman for Manchester, the gentleman from Boston, and all who are troubled upon this subject, could tell you where the trouble is. My friend from Boston (Mr. Hillard) told you, that we must stop short, because the adoption of the resolve would be injuring the criminal. I apprehend criminals would not choose such advocates of their cases. The judges, where the law is apparent upon the face of the indictment, will still have the control of the law. If there is no such law, you can make a motion to quash the indictment. If it is founded upon an unconstitutional law, the case need not go to the jury, for the right to quash the indictment is left with the court. The court now have the right to set aside the ver-

dict of guilty because it is against evidence, and does any man in his senses really believe that, under the amendment of the gentleman from Boston, the court will not exercise the power, in any and every case where there is a decided ground of suspicion, that the jury have erred upon the law against the prisoner, to set aside their verdict? Sir, I apprehend that all these objections come to nothing. The real question is, shall we establish this great principle of the common law, as a part of the Constitution? I, Sir, for one, if this is voted down, desire to have something by which we shall know where we stand. I do not want that anomalous state of things, I may say, with all respect, that ridiculous state of things now existing in this Commonwealth. The law as now settled by the court, and I understand the learned gentleman from Taunton agrees to it, that the jury have the *power* to find the law, but no *right* so to do; that they must take the law from the court, and if they exercise on that subject their own consciences and judgments, they violate their oaths. Yet, notwithstanding such is the established rule, the same court, laying it down, say that counsel may argue the law to the jury, although the jury have no discretion on that subject, but must follow blindly the directions of the court. To what absurdities and inconsistencies will not a deflection from a great principle lead even grave and learned courts! What morality is here inculcated! The jury violate their oaths morally, if they disregard the instructions of the court on the law; still, counsel are permitted to argue to them, hour after hour, to induce them to do it; to commit moral purjury. The jury have the power, and a counsel may get up and argue a law to them, and then they have not the right, without a violation of their oaths, to undertake to exercise that power. You may argue a law to the jury all day long, and then the judge gets up and says to the jury: "Gentlemen, you have the power to find the law, but if you exercise that power, you violate your oaths; you must take the law from the court."

Mr. MORTON, of Taunton. I understand the gentleman says, that I denied that they had the right to decide what the law is. I said in so many words, if the jury, having heard the direction of the court, upon their consciences believe the law was not so, they had the power, and the right, and it was their duty to say so.

Mr. ABBOTT. I am delighted that the gentleman from Taunton goes with us, and if the court had so ruled, we should not have needed this resolve. I ask him to put it into the Constitution so that the judges cannot get by it, and say to the jury: "You have the power, but if you exercise that power against the instruction of the court, you violate your oaths." I say, let us have something definite upon this subject, that can be understood and appreciated. The argument of the gentleman from Taunton really cannot be worth much, that there is no evil to be met, because the evil has already arisen. The construction of the law, as given by the gentleman from Taunton, does not agree with the construction laid down by the highest tribunal of this Commonwealth. I want to constitutionally enact the statement of the law as laid down by the gentleman from Taunton, so that rightfully and legally, and without being told that a man violates his oath, one may have a right to do just what is his duty, and what his conscience tells him to do. So that when the whole matter is before the juryman, and he has received the law from the court, and has brought his conscience and judgment to bear upon the whole subject, he shall have not only the power, but the right, to say that he finds *the fact* and *the law* as his conscience directs him.

Mr. LORD, of Salem. I yesterday proposed an inquiry to the gentlemen who advocate this resolve. I now desire to inquire, in the first place, of the gentleman who represents Wilbraham, (Mr. Hallett,) whether, by this resolve, he does not give absolute power to the court over any finding of the jury? Does not he who stands here, to interfere and protect the rights of the jury against the judges, give by this resolve, the judges absolute power over any finding of the jury which convicts a criminal?

I understand he limits that power to the finding of the jury in case of conviction. Now, is not the conviction of a guilty man as important as the acquittal of an innocent one? Have not the jury the same right to judge of guilt that they have to judge of innocence? Is it granting a proper power to say to the jury, the judge shall have power over you in case you decide one way, but he shall not have power over you in case you decide the other way? That is one inquiry which I should like to have the gentleman for Wilbraham, (Mr. Hallett,) answer.

I know of no other escape. If this resolve is adopted, the law is considered a matter of fact, to be proved by evidence. And how is that evidence to be introduced? According to this resolve, it is to be introduced under the direction of the judge. That is to say, you will give the jury the power of deciding what the law is as a matter of fact, and yet you will give the judge the power of saying what shall be the evidence of that fact. Now, we all of us who have had any practise in the courts, know that it is not the practise of the judges to allow the jury to read law books

for themselves. But I want to know, if they are to be the judge of what the law is, why you do not secure to them the right to read the law? If what the law is, is a fact, that fact is to be proved. If an attorney on one side of the case gets up and reads from a book, and says that is law, they are not to be governed by what he says, but they should be allowed to take the book, and see if there is not something there, on the next page, to qualify the passage quoted, for we all know that lawyers generally select some passage, and read what suits their own purposes, without reading the clause that qualifies it, and does not suit their purpose; therefore a juror says: "I should like to take that book for a moment; I should like to see whether there is not some qualification to what you lay down as law." If the lawyer has read a part of a section, the juror says: "I should like to look into that book, and see if you have read the whole section." Now, Sir, I say that if the law of the case is to be reduced to a matter of fact for the jury to decide, they ought to have the means given them of determining intelligibly what the law is; and I say, therefore, that experts in the law should be called in to testify. When we want to ascertain what the law of any foreign country is, upon any particular subject, we call in some one versed in that foreign law, to testify in relation to it, and we prove it as a matter of fact. We prove it by the testimony of those who have practised in that law. Upon the same ground, if the law is to be made a matter of fact for the jury to decide, provision should be made for calling in experts to prove it; and I say this resolution is imperfect, until such a provision is made.

For instance, a man is indicted and brought before the court for an offence. I say, the charge is not sufficient to convict the man, and I propose to introduce testimony in respect to the law, to prove that fact to the jury. But the judge says, No, Sir; the same resolution which provides that the jury shall be the judges of the law as well as fact, says that the judge shall determine the admission of evidence, and this is a species of evidence you cannot introduce. Gentlemen propose to give the jury the right to decide upon the law as a matter of fact, and yet they refuse to give them the evidence upon which to decide it.

Now, I agree entirely with the gentleman from Taunton, that the difficulty with the resolution is not that it affords too much protection to the party charged with crime, but on the other hand that it takes away that protection. I am not at all satisfied with the argument of the gentleman from Lowell, (Mr. Abbott,) upon this subject. I am not satisfied that under this resolution any judge in the Commonwealth will have the right to say there is no law upon which a prisoner can be convicted, when it is to be left for the jury to settle the question whether there is a law or not. Your resolve says that the question of law or no law, is to be settled by the jury. Do you mean to put into the hands of different tribunals to settle the question whether the proposition is is law or whether it is not? Shall the judge settle it or shall the jury, or will you give them concurrent jurisdiction; that is, give it to the power which outstrips the other, for I believe that is the general principle upon which concurrent jurisdiction operates. The party that can get it in its power first, keeps it and exercises it against the right of the other party. Well, Sir, do you propose to constitute a concurrent jurisdiction on the subject of law or no law? Is it necessary to the security of the individuals? Sir, I want to hear the member for Wilbraham answer the last question put to him by the delegate for Manchester, (Mr. Dana). It is this: whether the friends of this resolve mean to give to the court the power of reversing the decisions of fact made by the jury? Do they mean that? And I want to know if the gentlemen who mean that, are not those who are standing up for the rights of juries against judges? I have not heard any gentleman say—there is not a gentleman upon this floor who dares to stake his reputation upon denying that the judge ought to have the power to revise the decisions of the jury. Yet, while they give the judges the power to set the verdicts of the juries aside, they will not give them the power to instruct the jury in law.

Now, Sir, I think the whole trouble has arisen out of confounding all offences with a particular class of offences; to wit, political offences. All this talk about juries being the judges of the law as well as of the fact, has arisen out of political questions, and nothing else. And political offences in this country, thank God, are pretty rare; and they will be rarer in the future than they have been in the past. Very few instances where protection is needed in cases of that character, are recorded in the past, or are likely to occur in the future. Well, Sir, the power the jury have and the rights they have upon that subject, in my judgment, are well enough, so far as political offences are concerned, under the present Constitution; and they are the only cases in which any one can desire to have it applied, or in which the principle claimed can be applied.

Now, Sir, we should either say that the jury should be subject to the court in matters of law, or independent of it. They must be one or the

other. And if they are independent, the court has no right to revise their decisions.

Mr. HUNTINGTON, of Salem. Having been a member of the Committee, a portion of which submitted this resolve, I desire to submit a very few remarks concerning it. The subject is one which I regard of the greatest importance, but I am very sure that if the Convention fully understood the effect of the resolve—if they understood fully the designs of the gentleman who proposed it, they would not adopt it. I understand the gentleman to mean by this resolve—although it is not expressed in terms—to mean by it that the jury shall have the right, in criminal trials, to determine matters of law against the decisions of the highest tribunals in the country, or the highest tribunals in the world, in every particular case.

Now, Sir, in one view which may be taken of the resolve, I see no harm in it, because, as I understand it, under the present Constitution, in every case the jury do determine the law and the fact. In most cases, the question submitted to the jury is a question of law and fact. They are sworn to try the issue between the Commonwealth and the defendant, and of course they pass, and must pass, upon the law as well as upon the fact. There is, however, no occasion for this resolve to accomplish this object, because it is already accomplished by the existing laws. The principle has never been doubted. They are to determine matters of law, under the direction of the court.

Mr. HALLETT, (interrupting). I would suggest to the gentleman that they have not absolute jurisdiction.

Mr. HUNTINGTON. I cannot yield to the gentleman to interrupt me. I say that if this resolve only declares that, it only declares what is now law, and what, from the very nature of the case, must be the fact. The jury, in a criminal case, have the law submitted to them as evidence, and they must bring in their verdict of guilty or not guilty upon their decision of the law as well as the fact, and therefore I say, in this view of the case, I can see no harm in the resolve. But the gentleman who introduced it means something different from this. He intends to provide that when general law, or if you please, constitutional law, has been determined by the supreme court of the Commonwealth, the jury may disregard that decision. He means that when a question of constitutional law has been carried from the judicial tribunals of this Commonwealth to the supreme court of the United States, and decided there, by the highest judicial authority in the country, that a jury of twelve men, brought into court for the first time in their lives, to try a particular case, involving these questions of law which have thus received the highest judicial decision, may disregard that decision.

But the friends of the resolve see difficulties in carrying out this principle. They have slept upon it over night, and they find some little difficulty in submitting absolutely, without control or remedy, all questions of law to a jury of twelve men; and this morning they propose an amendment, providing that, in case of conviction, the court may set aside the verdict, because the jury may have decided the law wrongfully. Now I submit that there is no reason in making this provision, whatever. The jury should either be the judges of the law, or they should not be the judges. If it is safe and right to make the jury the judges of the law, absolutely and independently, in any particular case, then say so. But gentlemen are not prepared for that. O no; they are not prepared to trust to the judgment of a jury of twelve men in case of conviction; they want the power, in that case, of appealing from the jury to the court. If the jury acquit, there is an end of the matter. There is no remedy. The community have no remedy, although the prisoner may have been ever so improperly acquitted. But if the verdict is guilty, then they may come in and ask the court to set aside the verdict. It shows that gentlemen are afraid of that principle. It shows that they are afraid to trust to the jury so important a principle, but, upon the contrary, they themselves want the privilege of appealing to the impartiality of the court, in case of conviction.

Mr. President: We live under a government of laws, and we have the right to the protection of law. We have the right to be judged by the laws of the Commonwealth, as they have been interpreted by the highest judicial authority, and as they are known to exist. Now I undertake to say, that if this resolve be adopted, and you give to it the force which the gentleman for Wilbraham claims for it, that the juries will become the absolute judges of the law, independent of the court, and independent of former judicial decisions, and no man knows what the law is. No man can tell one day, what the law will be the next. When two cases, arising upon precisely the same state of facts, one case is submitted to one jury, and they find a verdict of guilty; and the other case is submitted to another jury, upon the same state of facts precisely, and they find a verdict of not guilty. Is that a government of laws? Are we to be protected under laws thus decided, and thus administered?

Sir, I regard the judicial tribunal, as constituted in this Commonwealth, as the most perfect

instrument ever invented by man. The discovery of a practical, learned, and impartial court to expound and interpret the laws, and of a set of impartial men, selected from the various classes of community, to judge of, and determine the facts of the case, I regard as the most important invention, and the most perfect instrument which ever emanated from the mind of man.

But with this resolve, as interpreted by the gentleman bringing it forward, I maintain we have no security. Ordinarily, in quiet times, I admit that perhaps it will make but little difference; but in cases of great excitement, upon which the public opinion is divided—and particularly in regard to a political offence—I maintain that this is a power which should not be given to a jury.

I mean to say, in cases where the public sentiment is much divided, because these gentlemen are disposed to put the law as well as the fact to the jury. I presume to say, that any gentleman who should undertake to argue the question of fact or law arising out of a case, where public opinion was strongly divided, could get one or two jurymen who would stand out. Sir, I pray gentlemen to consider the effect of this resolution as the gentleman designed it. I regard it as a very dangerous innovation, if that construction is put upon it, as I suppose it will be.

Mr. KEYES, for Abington. Sir, I hope that the Convention, in consequence of what has occurred here this morning, will not, at least, be frightened into a decision on this question. After having had it pretty thoroughly discussed yesterday, and a vote taken by a large majority in favor of these resolutions, and the end having arrived, as in ordinary cases of the end of a discussion, there has been a perfect avalanche of speeches on one side, as if by some combination it had been determined to frighten the Convention from its propriety, if there was any propriety in the decision of the Convention yesterday. Now, I do not know but there may have been a great deal of reason in the speeches which we have heard to-day, but at least, they have not affected my nerves at all. If there is any virtue in persistence, the gentlemen on that side of the question have a great deal of virtue, I confess.

Sir, in what position does the case now stand? We have it confessed on all hands, and more completely by the gentleman who has just taken his seat, that the provisions of this resolution are now the law, that they have always been the law. We all know that judge after judge, sitting on the bench, has told the jury himself that that was the law, and asked them to decide in that manner and on that principle. Now, where is the danger? Where have been the immense evils which have been pictured before us to-day so brilliantly, and who has seen them? The story has been repeated over and over again, and after all, these frightful effects have been proved to be only imaginary. Why not adopt this, and make universal what is now only partial? It is confessed that this same principle was adopted and was universal till 1828; and whether universal or not, there were a thousand cases which could be pointed out where the judge on the bench himself has told the jury before him, that they had all this power. And, how have they exercised it? Have any of these evils resulted from it, of which there is said to be so much danger? Not one. There is no pretence that one of them has ever resulted from it.

Now, with regard to that point which the gentleman for Manchester, (Mr. Dana,) made, that they were to be the judges of evidence. I do not think there is much necessity for this very amendment which has been offered this morning. The resolution does not touch any present power of the judges. If they can now grant a new trial, they can as well under this resolution, without the amendment. Now, I say that the decision of the judge on the admissibility of evidence, does not prevent the jury from entertaining an opinion, and being influenced by the opinion of the judge on the question of the evidence. Who ever sat on a jury that did not know that the very fact of listening to what it was proposed to prove by a witness, had its effect, though the witness was rejected? It would have as much weight on a jury as if the testimony had been received. Suppose a witness is brought on and the counsel tells what he means to prove, and gives the reason for it; and suppose the judge rejects the witness. The jury will decide in their own minds whether he is properly rejected or not, and on what grounds he is rejected. At any rate, whether they allow themselves to take notice of the precise language which it is said the witness would utter, or not, the purpose for which he was introduced, and the reasons for which he was rejected, will have an influence on the minds of the jury. They cannot help it; they never ought to help it; but every step in the progress of the trial, and every decision that that judge makes, all go to affect the minds and opinions of that jury.

Now, this resolution, as originally stated, leaves all the present power of the judges to them. They reject the evidence or admit it, or grant a new trial or not, in the same manner as they would under this amendment.

But I only rose to speak of the position that we occupied yesterday, compared with what appears to be the position of some to-day. Whether our

old men saw visions and our young men dreamed dreams last night, or not, I cannot say. But I should suppose they had all eaten hearty suppers and fed on horrors, that they should be so harrassed and alarmed to-day, when they were so quiet and calm yesterday. I have seen nothing of these horrors which we are to have result from this. We have had experience on this subject; and the experience of a hundred years is better than all their imaginations. And when the judges in the past, in all these years, have informed juries that they had this power and that they might exercise it, and when it is supposed they did exercise it, we still hear how dangerous it is. There is no danger, as has been proved; and there has not been an example brought forward to show that it is not as safe as any other mode.

I will now refer to the case spoken of by the gentleman from Boston. He says, that in nine cases out of ten, it will make no difference. I agree that it will make no difference, because the tendency of the juries is to take the law from the court. The judge, sitting in authority, and clothed with knowledge and character, always has an overpowering influence over the jurymen, and the tendency is always in that direction, to take away from the jurymen their responsibility. If the jurymen were to have more of the credit or the disgrace of a decision thrown upon them, then they would seek of the learned judge his knowledge to qualify them to come to a correct decision. But this is really the case; it may happen, sometime or other, that the popular sentiment may have an effect on the decision of a case. It is just as likely to have an effect on the judge as on the jury; and the question is, where shall we put this authority—into the hands of this one man, when affected by popular sentiment, or into the hands of twelve men? I would as soon leave the decision to one juryman, as to one judge. I believe that judges are not infallible. I believe that a volume has been published to the world, to show the inconsistencies of judges in making their decisions, and their mistakes. There is such a volume as that. Then, you see, the judges are not entirely perfect. By putting more responsibility upon the jurors, I ask you if you will not induce them to act more cautiously, to maintain their own characters? Because, these jurors are respectable men, who wish to maintain a proper standing in society, just as much as the judges do; and it will be an extra inducement for them to seek from the judge the knowledge which he has, and which they lack themselves. The more that responsibility is placed on them, the more they will feel the necessity of acquiring that knowledge from the judge which they have not themselves. For these reasons, although I have no objection to the amendment, it strikes me there is no danger in passing the resolution, as we adopted it yesterday; and I do not believe the heavens would fall if we were to pass it in that way.

Mr. ROCKWELL, of Pittsfield. No man is more disinclined, for a single moment, to interrupt the progress of this Convention, than I am myself. It is because I consider the question to be in the condition that it is, that I wish to say a few words expressive of my opinion on the subject. It is because there is a persistence, upon both sides of this question, and for the reason that time and time again might be given, for the consideration of important questions here, that the rules which govern us have been adopted, as I apprehend. And time and time again does it happen, as every man knows who knows anything about legislative assemblies, that propositions which have passed their first and second stages by a great majority, have been defeated by common consent at the last or a subsequent stage.

Now this is a practical question. The heavens will not fall, however we may decide it to-day; the heavens may never fall, however it may be decided. Nevertheless, it may be, as I deem it to be, of great importance to this community upon which it is to operate.

Now, Sir, my practise has been in the country part of the Commonwealth, and I confess here that there have been times, when the law has been pressed hardly upon my clients, when I was ready to go out of the court-room, dissatisfied with the law as laid down by the bench, and ready to vote, and give my influence to give that question to the jury, with whom I might have supposed I would have a better chance for the relief of my client. But, upon cooler reflection, I have been led to doubt how I could follow up these impulses of my mind properly thereafter. Now, what is the situation of those persons usually, who are indicted in the counties in the country? Most of them are poor, without pecuniary means; most of them unable to demand counsel. They have against them always the friends of the Commonwealth; they have against them the most respectable men to take care of the Commonwealth. They must either have no counsel at all, or such counsel as may be induced to volunteer for them, or be obtained by other motives than those which they can present in a pecuniary form. There is the judge upon the bench, perfectly understanding the law. No matter who their counsel is, so that he present all the points that can be presented in the case. And if any one of them is such that the court can recognize it as a protection to the accused, then he

has the benefit of the law as fully as though he were defended by the ablest counsel that money could obtain. Now how is it that so many persons are indicted every term, and that, in so many cases, the law steps in to relieve them? Every-body knows it, that knows anything of the practise of our criminal courts. Is this worth nothing? Consider if you were indicted, as any man may be indicted; consider if you were brought to the bar of the court of common pleas in this Commonwealth; consider that you have an able district-attorney learned in the law and armed with experience; consider that he may call to his aid, also, the best legal talent in the Commonwealth, even the present attorney-general; consider this to be the situation of the person indicted, and whether he ought not to have, also, the influence of the law and the influence derived from the power to instruct the jury, which the learned judge has.

But, Sir, this matter may come up perhaps, not to your or my experience, but to the experience, however, of some of our posterity, or of the citizens of this Commonwealth, in times of political excitement, when that spirit rages which no man who has attempted has succeeded in controlling; when that mob spirit, which, in the power of the tempest, has no parallel in the comparison, and of which hurricanes and earthquakes are but feeble illustrations—when that rages abroad in the community, and the accused is brought to the bar where the public opinion is arrayed against him and he receives his doom. What then? We all claim, every-body claims who knew him, that he was a peace-loving man. What then will be the influence upon that jury, I ask? Now, it will be said, here has been a verdict of public opinion against the popular sentiment. But a learned judge has declared the law, is bound to declare the law to the jury, and the jury under that instruction has given its verdict. But suppose the judge could walk above that enraged community, and could say that the jury have given a verdict which I would not have given; I have not instructed them at all; I am under no responsibility. Then comes upon the devoted heads of those twelve men, unprotected by the shield of the law, the indignation of the excited community. I do not overdraw this picture at all. I believe there are elements in this community, that in time, may produce these effects. And I have seen them, and any man who has seen them will never forget them. Now the judge is bound —and this is my safety and yours also—the court is bound to declare the law. As it has been decided, and is the law, that the court is bound to declare it, the judge upon the bench has more reasons than one why he should declare it so. In the first place, his legal reputation, which is, in most instances, his only property, is at stake. In the next place he is liable to impeachment; and the fact that he has given a flagrant decision and flagrant instructions to the jury, under circumstances which may lead to corruption, or may be the effect of corruption, is a portion of the evidence which may lead to conviction upon a trial for impeachment, and he knows it.

Then the protection of the individual is, that in the first place every safeguard which can be given has been thrown by the law around the law itself, and also in the opportunity which he may have before the jury in setting forth the facts of his case. To say nothing of any other reasons, it seems to me that this is conclusive why we should not now allow this innovation to be made. It has been suggested to me by some gentlemen, for whose opinions I have a great respect, that this is one of the reforms of the present time, and that all reforms are resisted, but that all reforms prove to be beneficial. Let us consider that matter. There are millions of reforms proposed, while there are but thousands or perhaps hundreds adopted; and those are only adopted after undergoing the agony of investigation and argument, persistent argument on both sides, stage after stage, and time after time. It is only reforms of that kind which are finally adopted, and which are beneficial. Whether this is one of those, will depend upon the issue of this debate. It is not enough to say to us that this comes in the shape of a reform; it may be one of those which, like millions of others, has only to be examined in order to be rejected.

Mr. DAY, of Templeton, then moved the previous question.

Mr. DANA, for Manchester, moved that the resolve and amendments be laid upon the table.

Mr. EARLE asked the yeas and nays upon the motion of Mr. Dana; and they were ordered.

Mr. BROWN, of Medway, moved a reconsideration of the vote by which the yeas and nays were ordered; which was agreed to.

The question then recurred upon the motion for the yeas and nays—and they were again ordered, more than one-fifth voting therefor.

The question being then taken on the motion of Mr. Dana, the result was—yeas, 153; nays, 182—as follows:—

YEAS.

| | |
|---|---|
| Adams, Benjamin P. | Andrews, Robert |
| Aldrich, P. Emory | Aspinwall, William |
| Allen, Joel C. | Atwood, David C. |
| Allen, Parsons | Ayres, Samuel |
| Alley, John B. | Ball, George S. |

Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bliss, Gad O.
Bradbury, Ebenezer
Bradford, William J. A
Braman, Milton P.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Buck, Asahel
Bullock, Rufus
Bumpus Cephas C.
Carter, Timothy W.
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Childs, Josiah
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cooledge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Crowell, Seth
Curtis, Wilber
Dana, Richard H., Jr.
Davis, Solomon
Dawes, Henry L.
Deming, Elijah S.
Denison, Hiram S.
Dorman, Moses
Eames, Philip
Eaton, Lilley
Edwards, Samuel
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fay, Sullivan
Foster, Aaron
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gilbert, Wanton C.
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hammond, A. B.
Harmon, Phineas
Haskell, George
Hathaway, Elnathan P.
Hayward, George
Heard, Charles
Henry, Samuel
Hersey, Henry
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kendall, Isaac
Kinsman, Henry W.
Knight, Joseph
Knowlton, Charles L.
Kuhn, George H.
Ladd, John S.
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morton, Elbridge G.
Noyes, Daniel
Orcutt, Nathan
Park, John G.
Parker, Adolphus G.
Parsons, Thomas A.
Peabody, George
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Putnam, John A.
Read, James
Reed, Sampson
Rockwell, Julius
Sampson, George R.
Sanderson, Chester
Sargent, John
Schouler, William
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Sumner, Increase
Talbot, Thomas
Tileston, Edmund P.
Train, Charles R.
Turner, David
Upham, Charles W.
Walcott, Samuel B.
Wallace, Frederick T.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Wilson, Milo
Winn, Jonathan B.
Woods, Josiah B.

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Burlingame, Anson
Caruthers, William
Case, Isaac
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cleverly, William
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Robert T.
Day, Gilman
Dean, Silas
Denton, Augustus
Dunham, Bradish
Earle, John M.
Easton, James, 2d,
Eaton, Calvin D.
Edwards, Elisha
Ely, Joseph M.
Fellows, James K.
Fisk, Lyman
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra, 2d,
Hewes, James
Hewes, William H.
Hobart, Henry
Hood, George
Hooper, Foster
Howard, Martin
Hoyt, Henry K.
Hunt, Charles E.
Huntington, Charles P.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Leland, Alden
Loomis, E. Justin
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nichols, William
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Pease, Jeremiah, Jr.
Penniman, John

Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Powers, Peter
Rantoul, Robert
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sherril, John
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Sumner, Charles
Swain, Alanson
Taft, Arnold
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom, B.
White, George
Whitney, Daniel S.
Wilbur, Daniel
Williams, Henry
Williams, J. B.
Wilson, Henry
Wilson, Willard
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Allen, Charles
Appleton, William
Ballard, Alvah
Bancroft, Alpheus
Banks, Nath'l P., Jr.
Barrett, Marcus
Beach, Erasmus D.
Beebe, James M.
Bishop, Henry W.
Blagden, George W.
Bliss, William C.
Booth, William S.
Brown, Hiram C.
Bullen, Amos H.
Butler, Benjamin F.
Cady, Henry
Chapin, Henry
Choate, Rufus
Churchill, J. McKean
Cook, Charles E.
Cross, Joseph W.
Crowninshield, F. B.
Cummings, Joseph
Cushman, Henry W.
Davis, Isaac
Davis, John
Dehon, William
DeWitt, Alexander
Doane, James C.
Duncan, Samuel
Durgin, John M.
Easland, Peter
Fiske, Emery
Fitch, Ezekiel W.
Gooch, Daniel W.
Greenleaf, Simon
Hale, Nathan
Hall, Charles B.
Heywood, Levi
Holder, Nathaniel
Huntington, George H.
Kellogg, Martin R.
Lawton, Job G., Jr.
Lincoln, Abishai
Lincoln, F. W., Jr.
Little, Otis
Marble, William P.
Meader, Reuben
Morton, Marcus
Nayson, Jonathan
Newman, Charles
Norton, Alfred
Ober, Joseph E.
Oliver, Henry K.
Paige, James W.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Payson, Thomas E.
Peabody, Nathaniel
Phinney, Silvanus B.
Preston, Jonathan
Prince, F. O.
Putnam, George
Rockwood, Joseph M.
Sheldon, Luther
Sherman, Charles
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Taber, Isaac C.
Taylor, Ralph
Tower, Ephraim
Turner, David P.
Tyler, John S.
Tyler, William
Upton, George B.
Wales, Bradford L.
Warner, Marshal
Whitney, James S.
Wilkinson, Ezra
Winslow, Levi M.
Wood, Nathaniel

Absent and not voting, 84.

So the motion was not agreed to.

The question then recurred on the motion of Mr. Day, of Templeton, that the main question be now put; which was agreed to.

The first question was on the amendment of Mr. Huntington, of Northampton, to add at the close of the resolve, the following:—

But it shall be the duty of the court to superintend the course of the trial, to decide upon the admission or rejection of evidence, upon all questions of law raised during the trial, and upon all collateral and incidental proceedings, and also to allow bills of exceptions; and the court may grant a new trial in cases of conviction.

The amendment was agreed to; and the resolve, as thus amended, was passed.

*Amendments of the Constitution.*

The resolves on the subject of Amendments of the Constitution were then taken up, and read the second time, as amended; and the question was stated on their final passage.

Mr. MORTON, of Quincy. Mr. President: This subject has been considered by the Convention at length; the resolves have been printed, and put into the hands of every member of this body, so that there has been a full opportunity to examine the whole subject, and I think we are prepared to vote upon it without any farther discussion. I therefore move the previous question.

Mr. LORD, of Salem. I want to know if the previous question was not ordered on this matter last night, on the ground that the question was not on the final passage of the resolves, and that there was to be another stage; and was it not the express understanding that when they came up on their final passage, there would be an opportunity afforded to discuss them farther? That is the way that I understood it. I do not believe that this Convention is quite ready to put this matter through without another word being said about it. It is a most important proposition, and I desire to have it thoroughly understood before we proceed to vote upon it; and I am not ready to believe that the Convention will order the previous question without allowing an opportunity for farther amendments to be proposed. Mr. President, I move that when the question be taken upon ordering the previous question, it be taken by yeas and nays.

Mr. DANA, for Manchester. The gentleman from Salem is right in his statement.

Mr. MORTON, of Quincy. If the gentleman will allow me, in order to stop discussion, I withdraw the motion for the previous question.

The question then recurred on the final passage of the resolves, as amended.

Mr. JENKINS, of Falmouth. Mr. President: In all future Conventions of the people for the purpose of amending their Constitution, I think it is obviously just and proper that delegates shall be so elected as fully and fairly to represent the will of a majority of the people of the Commonwealth. But, Sir, as I understand it, these resolves do not so provide; and to this I object. For the purpose of remedying what I consider to be a defect, I propose to introduce an amendment to the first resolve. I think it is desirable that in all Conventions the people should be fairly and fully represented; but how is it in this Convention? Here is one of the north-western counties in this Commonwealth, having a population of thirty thousand, and it is represented upon this floor by twenty-six delegates; and here is another county, having a much larger population, or fifty thousand, which has only twenty-three delegates. Is this a fair representation? I ask members of this Convention if they regard this as fair and equal? Now, Sir, these resolves, as they are reported, are designed to perpetuate this inequality; and it is this provision that I wish to strike out. Sir, the gentleman from Boston, upon my left, said, the other day, that the chain was put about our necks but this provision designs to rivet it there. I agree with him in that expression. Sir, if one portion, and one section, of this Commonwealth is to be disfranchised in part, I think that the emblem of industry in this hall should be taken down. I do not wish to have it there as a memorial of oppression; and in the name of that portion of the people whom I have the honor to represent here, I protest against this. The amendment which I propose is this: to strike out the following words, immediately after the word "ensuing," in the first resolve, "Meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives, which the towns and cities shall then be entitled to elect," and to insert in lieu thereof the words: "The qualified voters of each senatorial district in the Commonwealth shall elect, in the same manner as they shall elect senators to the general court, —— delegates." I leave the blank for the Convention to fill with such number as they shall think proper; and upon the amendment I ask the yeas and nays.

Mr. BRADFORD, of Essex, moved to amend the amendment, by striking out all after the word "chosen," to the end of the sentence, and inserting, in lieu thereof, the following:—

In the same manner as the senators shall by law be chosen, in the proportion of —— to each senator, to be elected by general ticket in each senatorial district, unless before that time the State shall be by law divided into single districts for that purpose, or for the election of representatives; in which case, one delegate shall be chosen for each district thus constituted.

The question being taken on the amendment to the amendment, it was not agreed to.

The question being taken on ordering the yeas and nays on the amendment of Mr. Jenkins, on a division there were—ayes, 72; noes, 158—so the yeas and nays were ordered.

Mr. BRADBURY, of Newton. This is a proposition I did not expect to hear, but it is one I very much like. I think it may reach and remedy the enormous evils which must naturally and inevitably result from the constitution of the House of Representatives, as settled by this Convention.

If the question were simply whether we should now undertake to establish the organic basis for a future Convention, on the principle upon which this body is instituted, I could not give my vote for it, because I should deem it an unjust violation of popular rights. The injustice of such a basis was clearly demonstrated during the discussions of the basis of the House. It was shown that a small minority of the people, as represented in this Convention, had undertaken to establish what shall be the present and prospective constitution of the House of Representatives; but I shall not now go into that question, or comment upon what has been definitely decided by the Convention.

If we are to have another Convention, either in ten, or twenty years, or at any other period, let its constitution rest upon contemporary facts and considerations—let it be based upon the population of the period. I cannot believe that this body fully comprehends the prospective operation of the last modification it gave to the basis of the House of Representatives. That modification was submitted but thirty minutes previous to the final vote, and no adequate examination was, or could be, given to that radical proposition.

Sir, in 1873, by the resolves under consideration, a much smaller minority of the people will be here, constituting a controlling majority of a Convention for modifying your organic law,—a

minority smaller than that which all men know —in and out this house—controls the action of this body upon all questions of the *division of power*, and the assignment of representative rights.

But this unjust inequality will be constantly augmenting by the legitimate action of the system attempted to be fastened upon the State. By the estimated census of 1870 it will be enormously increased. It will then be but a small portion of the Commonwealth which will possess a control over its legislation, and that same small portion will, by the resolves under consideration, be invested with a power that can, in a Constitutional Convention, effectually secure that power in its own hands. That small minority can, as it pleases, preserve, for its own advantage, the basis of representation, or it can surrender its advantages and consent to alter the most vital part of your organic law, as an act of magnanimity. The question submitted in such a case will be this: Will you retain the political power with which you are now constitutionally clothed, or surrender magnanimously what has been wrongfully held, if not improperly acquired?

Sir, if we are to have a Convention in 1870, founded on the basis of the representation that will then exist, it will be utterly impossible, in any degree, to modify the basis of the House of Representatives.

There have been, as gentlemen well know, without reference to particular instances, numerous cases of unequal representation in the political history of the older States of this Union, which have been the result of popular changes and the unequal growth of different sections represented.

I need but advert to a single instance under the Constitution of Virginia. The slave-holding and planting sections of that State controlled the government completely. Less than a third of the free people held a majority of legislative power over the two-thirds, and this minority succeeded, for twenty years, in resisting all attempts at an equalization of representation. But, in 1830, after violent agitation, and an apprehended division of that State, a Convention was obtained. Upon the question of representation, those sections of the State in possession of an undue share of legislative power, clung tenaciously to the retention of the power they had enjoyed, and by an adroitness of management not exceeded by minorities elsewhere, they succeeded, at a late day, in shutting the door to all farther concessions of power to the popular majority. How? By limiting the future distribution of representatives to counties and cities, so as not to disturb certain lines between slavery and freedom. And here we have from gentlemen who detest the motives that guided the minority of that Convention, a carefully prepared plan, having the same object—the establishment of a constitutional guarantee of unjust authority and power against the popular majority.

Sir, there is some extenuation for that community that endures inequalities of representation which have grown up gradually, as the unavoidable result of popular changes, and the varying ratios of increase in its different sections. It is impossible that any advancing community should not change the relations of its different parts, and no honest man will advocate an organic law, destitute of a provision to meet and equalize these relations. All will admit the necessity of some provision of this kind, and no man expects or dares to go before his constituents to defend its omission.

Now if we are to establish a mode of effecting a change of our organic law, let us have reference to the condition of things which may demand it, and not attempt to bind the future action of the people by an iron rule, made for the present condition of things. Let us not attempt to confine the people in their future action upon their organic law, by a rule founded on the present interests, condition, or politics of the State. Let us not say to the future that it shall act only in the manner which we, under existing circumstances, consider it proper to proceed.

Sir, I have not the statistics here, but I am sure that a much smaller minority will have the power of determining the time and manner in which the Constitution is to be amended again; the power of determining what shall be the basis of the House; and whether, and how long, an increasing majority of the people of the Commonwealth shall submit to a waning minority. There can be little doubt that the number of members of the House of Representatives will, in 1870, be four hundred and forty, exclusive of those from the new towns, which will be created between now and then. And how many such will be incorporated within that period? Why, Sir we made seven within the last three years, and according to that ratio, it will give us fifty additional by the creation of new towns up to 1873. Then, Sir, we shall have four hundred and ninety representatives, and the majority of the people in that House will have some thirty per cent. less power to rectify that inequality, if this is to be the basis of a Constitutional Convention. I would ask, Sir, what any honest, liberal man, can say against a rule which shall be precisely in proportion to the people as they exist in different parts of the State? Why should you fix a rule that in 1873

will give to about one-fourth of the people of Massachusetts—and I am certain I speak within bounds—the right to elect a majority of a Constitutional Convention which is to have submitted to them the question whether they will retain or surrender that proportion of the law-making power. Sir, it is an enormity that cannot be found in the history of law-making or Constitution-altering in the whole country, enormous as they have been, and condemned as they have been, by every man in Massachusetts who has looked at them. Sir, the Rhode Island revolution proceeded from the same grasping of power.

Our forefathers submitted to a rotten-borough system and its enormities, for a while, but they did not from choice. It grew up with the peculiar institutions under which they lived. And here we are, without any excuse or extenuation, sending out, at the last hour of a protracted Convention, a system of representation which we know will grow more and more unequal every year. And more—and more inexcusable—we now propose, as a *future* remedy for the inequalities we have created, to submit the question of their rectification to the magnanimity of their beneficiaries! If an aggrandized minority choose to grant the principle of equal representation, the people will gain their rights, if not, they must endure them for two more decades for a new chance.

Sir, I wish some gentleman, better posted up in these prospective legislative statistics than I am, had risen to present to the Convention more clearly the inequalities thus produced, and the enormous injustice of submitting the question—whether we shall have the Constitution altered in 1783 to a legislature elected by one-fourth of the people of Massachusetts. Sir, I want the people to settle the question; and I hope that this amendment will be adopted.

*Limitation of Debate.*

Mr. ALVORD, for Montague. In order to let in a motion for the limitation of debate upon this subject, I move that the Orders of the Day be laid upon the table.

The motion was agreed to.

Mr. ALVORD. I now move that debate cease upon this subject, and that we proceed to take the vote upon this question at fifteen minutes past one o'clock.

Mr. ASPINWALL, of Brookline. I move that when the question is taken on that motion, it be taken by yeas and nays.

A division was called for on the demand for the yeas and nays, and resulted—54 in the affirmative and 133 in the negative—and, there being more than one-fifth in favor of the yeas and nays, the yeas and nays were ordered.

*Orders of the Day.*

Mr. ALVORD, for Montague. I move that the Convention now proceed to the consideration of the Orders of the Day.

Mr. GRISWOLD, for Erving. I wish the gentleman for Montague would withdraw that motion for a moment. I wish to make a motion that will occupy no time.

Mr. ALVORD. I withdraw the motion for the Orders of the Day.

*Hour of Adjournment.*

Mr. GRISWOLD, for Erving. I understand that there are some matters now pending which it is important should be disposed of to-day, so that they may go to the Committee on Enrolment to-night. I therefore move that our session this afternoon may be continued until eight o'clock.

The PRESIDENT. The question pending before the Convention is on the motion limiting debate on the Orders of the Day, which has just been laid on the table, and fixing the time for taking the question at fifteen minutes past one o'clock. The Chair is of opinion that the motion of the gentleman for Erving is not in order at this time. It may be accomplished by moving to lay the question limiting debate upon the table.

Mr. GRISWOLD. Then I make that motion.

The question was accordingly laid upon the table.

Mr. GRISWOLD. I now move, that in our afternoon session the Convention shall sit until eight o'clock this evening.

Mr. GARDNER, of Boston. I wish to inquire whether, if this motion is adopted, it will preclude the Convention from adjourning at an earlier hour?

The PRESIDENT. The Convention can adjourn at any time it pleases.

Mr. GARDNER. Then I do not see the object of the motion of the gentleman for Erving.

Mr. GRISWOLD. I think, for the reasons I have stated, it will be necessary for the Convention to sit until that time, and I merely make the motion with the view of giving the members notice, so that gentlemen might not leave us without a quorum.

Mr. THOMPSON, of Charlestown. I very much doubt the expediency of that motion, for I think that long before that period we shall be left without a quorum. We intended last evening to sit somewhat later than usual, but we found that long before seven o'clock there was not a quorum here. It appears to me to be inexpedient

to pass such a vote when it has been thoroughly proved that we cannot have a quorum. And I would ask whether it is possible to act here without a quorum? If not, I think we had better wait till the afternoon, and see whether members are here.

The question on the motion to continue the session until eight o'clock was then taken, and on a division, there were—ayes, 106; noes, 109.

So the motion was not agreed to.

*Priority of Motions.*

Mr. GRISWOLD. I now move to take the motion of the gentleman for Montague from the table.

Mr. LORD, of Salem. I am as desirous of hurrying business as anybody, and am sorry to see these motions made, which merely tend to the consumption of time. I move that we proceed to the consideration of the Orders of the Day.

The PRESIDENT. The Orders of the Day are upon the table.

Mr. LORD. Precisely, Sir; so I understood; and I move to take them up from the table.

The PRESIDENT. The first question in order is the motion of the gentleman for Erving, (Mr. Griswold,) to take from the table the motion of the gentleman for Montague, (Mr. Alvord).

Mr. LORD. I move that the Convention proceed to the consideration of the Orders of the Day, and I make that motion as a privileged motion.

The PRESIDENT. The Orders of the Day are upon the table.

Mr. LORD. I am aware of it, and move to take them up.

Mr. GRISWOLD. I wish to inquire whether the motion which I made has not precedence of the motion of the gentleman from Salem?

The PRESIDENT. The Chair is of opinion, without having time to reflect upon or consider the subject, that the motion to take up the Orders of the Day will have precedence over the motion fixing the time for closing debate.

The question was then taken on the motion to proceed to the consideration of the Orders of the Day, and, a division being demanded, there were —ayes, 87; noes, 126.

So the motion to take up the Orders of the Day, was not agreed to.

Mr. GRISWOLD. I now move to take from the table the motion of the gentleman for Montague.

The motion was agreed to.

The PRESIDENT. The question now recurs on the motion to limit debate on the first question in the Orders of the Day, to fifteen minutes past one o'clock.

*Amendments of the Constitution.*

Mr. SCHOULER, of Boston. I now move to take the Orders of the Day, from the table.

The question was put, and the motion was agreed to.

The PRESIDENT. The question is upon the amendment of the gentleman from Falmouth, (Mr. Jenkins).

Mr. JENKINS, of Falmouth. I desire to modify my amendment by striking out the last four lines, all after the word "and," and insert the words "the legal voters of each senatorial district shall, by general ticket, in the manner then provided by law for the election of delegates, choose —— delegates."

The PRESIDENT. The question is upon the amendment as modified, and upon that the Convention have ordered the yeas and nays.

Mr. SCHOULER. I would inquire if the hour of two o'clock should arrive before the calling of the roll shall be finished, would the Convention be adjourned at that time?

The PRESIDENT. If the Convention commence to divide, the rule in relation to the time of adjournment will not interrupt the proceeding.

The question was then taken, and there were —ayes, 90; nays, 161—as follows:—

YEAS.

| | |
|---|---|
| Aldrich, P. Emory | Hale, Nathan |
| Andrews, Robert | Haskell, George |
| Atwood, David C. | Hathaway, Elnathan P. |
| Barrows, Joseph | Heard, Charles |
| Bartlett, Sidney | Hersey, Henry |
| Bates, Eliakim A. | Hillard, George S. |
| Bigelow, Jacob | Hinsdale, William |
| Bradbury, Ebenezer | Hooper, Foster |
| Braman, Milton P. | Hopkinson, Thomas |
| Bronson, Asa | Hubbard, William J. |
| Brownell, Frederick | Hunt, William |
| Carter, Timothy W. | Huntington, Asahel |
| Cogswell, Nathaniel | Hurlburt, Samuel A. |
| Cooledge, Henry F. | Jackson, Samuel |
| Copeland, Benjamin F. | James, William |
| Crosby, Leander | Jenkins, John |
| Crowell, Seth | Kellogg, Giles C. |
| Curtis, Wilber | Kinsman, Henry W. |
| Davis, Charles G. | Kuhn, George, H. |
| Davis, Solomon | Ladd, John S. |
| Dawes, Henry L. | Lawton, Job G., Jr. |
| Denison, Hiram S. | Lincoln, Frederic W., Jr. |
| Dorman, Moses | Littlefield, Tristram |
| Eaton, Lilley | Livermore, Isaac |
| Fiske, Emery | Lord, Otis P. |
| Fowler, Samuel P. | Lothrop, Samuel K. |
| Frothingham, Rich'd, Jr. | Lowell, John A. |
| Gardner, Henry J. | Miller, Seth, Jr. |
| Gilbert, Wanton C. | Morey, George |
| Giles, Joel | Morton, Marcus |
| Gould, Robert | Noyes, Daniel |
| Gray, John C. | Oliver, Henry K. |
| Hale, Artemas | Orne, Benjamin S. |

Park, John G.
Parker, Samuel D.
Peabody, George
Perkins, Daniel A.
Plunkett, William C.
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Stevens, Charles G.
Talbot, Thomas
Thompson, Charles
Tileston, Edmund P.
Train, Charles R.
Upham, Charles W.
Upton, George B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
Wilkins, John H.
Williams, Henry
Wilson, Milo

NAYS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alvord, D. W.
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Sewell
Breed, Hiram N.
Brinley, Francis
Briggs, George N.
Brown, Artemas
Brownell, Joseph
Bryant, Patrick
Cady, Henry
Case, Isaac
Chapin, Daniel E.
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Stillman
Crane, George B.
Cressy, Oliver S.
Cutler, Simeon N.
Davis, Isaac
Dean, Silas
Denton, Augustus
Dunham, Bradish
Eames, Philip
Earle, John M.
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Giles, Charles G.
Gooding, Leonard
Goulding, Dalton
Graves, John W.
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d,
Hewes, James
Hewes, William H.
Hobart, Henry
Hobbs, Edwin
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Jefferson
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parris, Jonathan
Partridge, John
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pomroy, Jeremiah
Pool, James M.
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sherril, John
Simonds, John W.
Smith, Matthew
Spooner, Samuel W.
Stacy, Eben H.
Stevens, William
Stiles, Gideon
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Turner, David P.
Viles, Joel
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Ward, Andrew H.
Warner, Samuel, Jr.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Woods, Josiah B.
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Adams, Benjamin P.
Alley, John B.
Allis, Josiah
Appleton, William
Aspinwall, William
Austin, George
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, Willam C.
Boutwell, Geo. S.
Bradford, William J. A.
Brewster, Osmyn
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hammond
Brown, Hiram C.
Buck, Asahel
Bullock, Rufus
Bullen, Amos H.
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Chandler, Amariah
Chapin, Chester W.
Chapin, Henry
Childs, Josiah
Choate, Rufus
Clarke, Alpheus B.
Cleverly, William
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Cook, Charles E.
Crittenden, Simeon
Crockett, George W.
Cross, Joseph W.
Crowninshield, F. B.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, John
Davis, Robert T.
Day, Gilman
Dehon, William
Deming, Elijah S.
DeWitt, Alexander
Doane, James C.
Duncan, Samuel
Durgin, John M.
Easland, Peter
Easton, James, 2d
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fitch, Ezekiel W.
Fowle, Samuel
French, Charles H.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Gooch, Daniel W.
Goulding, Jason
Greene, William B.
Greenleaf, Simon

| | |
|---|---|
| Hadley, Samuel P. | Powers, Peter |
| Hall, Charles B. | Preston, Jonathan |
| Hammond, A. B. | Prince, F. O. |
| Haskins, William | Putnam, George |
| Hayward, George | Putnam, John A. |
| Hazewell, Charles C. | Rockwell, Julius |
| Henry, Samuel | Sampson, George R. |
| Heywood, Levi | Sanderson, Chester |
| Hobart, Aaron | Schouler, William |
| Holder, Nathaniel | Sheldon, Luther |
| Houghton, Samuel | Sherman, Charles |
| Hunt, Charles E. | Sikes, Chester |
| Hyde, Benjamin D. | Simmons, Perez |
| Jenks, Samuel H. | Sleeper, John S. |
| Johnson, John | Souther, John |
| Kellogg, Martin R. | Sprague, Melzar |
| Knight, Hiram | Stetson, Caleb |
| Knight, Joseph | Stevens, Granville |
| Knowlton, Charles L. | Stevens, Joseph L., Jr. |
| Langdon, Wilber C. | Stevenson, J. Thomas |
| Little, Otis | Storrow, Charles S. |
| Loud, Samuel P. | Strong, Alfred L. |
| Marble, William P. | Stutson, William |
| Marcy, Laban | Sumner, Increase |
| Marvin, Abijah P. | Sumner, Charles |
| Marvin, Theophilus R. | Swain, Alanson |
| Mason, Charles | Taber, Isaac C. |
| Meader, Reuben | Taylor, Ralph |
| Mixter, Samuel | Thayer, Joseph |
| Morss, Joseph B. | Tower, Ephraim |
| Morton, William S. | Tyler, John S. |
| Newman, Charles | Tyler, William |
| Norton, Alfred | Underwood, Orison |
| Ober, Joseph E. | Walcott, Samuel B. |
| Orcutt, Nathan | Walker, Amasa |
| Paige, James W. | Warner, Marshal |
| Paine, Henry | Waters, Asa H. |
| Parker, Adolphus G. | Weston, Gershom B. |
| Parker, Joel | Wilbur, Daniel |
| Parsons, Samuel C. | Wilbur, Joseph |
| Parsons, Thomas A. | Wilder, Joel |
| Payson, Thomas E. | Wilkinson, Ezra |
| Peabody, Nathaniel | Williams, J. B. |
| Perkins, Jonathan C. | Winn, Jonathan B. |
| Phinney, Silvanus B. | Wood, Nathaniel |

Absent and not voting, 168.

So the amendment was rejected.

The hour of two o'clock having arrived, the Convention then adjourned.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock.

On motion of Mr. HOLDER, of Lynn, the consideration of the Orders of the Day, being the resolves in relation to Conventions to Revise the Constitution, was resumed.

Mr. HOOPER, of Fall River. We have directed the census to be taken in 1855, and every ten years thereafter; consequently, it will be taken in 1865 and in 1875; so that, if this provision is adopted, the Convention will be held the year before the census will be taken. For this reason I move that the figures "1873" be stricken out, and "1875" inserted, in the following part of the first resolve:—

A Convention to revise or amend this Constitution, may be called and held in the following manner: At the general election in the year 1873, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?"

Mr. ASPINWALL, from Brookline. I suggest to the gentleman, that the census will be taken in May, 1875, and it will be impossible to apportion the representation before the time provided for holding the Convention, and therefore, the delegates to the Convention of 1875 cannot be elected on the basis of the representation of 1875. It seems to me that the year should be changed, if changed at all, to 1876, if the intention is that the Convention shall be regulated by the basis of representation of 1875.

Mr. HOOPER. I accept the suggestion, and modify my motion accordingly.

The question was then taken upon the motion of Mr. Hooper, and there were, upon a division —ayes, 54; noes, 80.

So the amendment was rejected.

Mr. LORD, of Salem. I would inquire if there is any amendment pending?

The PRESIDENT. There is not.

Mr. LORD. I move, then, to insert after the word "affirmative," in the first resolve, in the thirteenth line, the words, "and if the number of affirmative votes shall be at least in number two-fifths of the whole number of votes cast for governor at such election," so that that portion of the resolve shall read:—

Which votes shall be received, counted, recorded and declared, in the same manner as in the election of Governor; and a copy of the record thereof, shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall publish, in the newspapers in which the laws are then published, the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, and if the number of affirmative votes shall be at least in number two-fifths of the whole number of votes cast for Governor at such election, it shall be deemed and taken to be the will of the people that a Convention should meet accordingly.

I do not propose to make any extended remarks at this stage of the proceeding. I proposed an amendment yesterday afternoon, which received no attention whatever.

The PRESIDENT. The Chair would remind the gentleman, that the Convention have ordered that no debate should be had after a certain hour, which hour is already passed.

Mr. LORD. That being so, I move the yeas and nays upon the amendment.

The House was divided upon ordering the yeas and nays, and there were, upon a division—ayes, 18; noes, 153.

So the yeas and nays were refused.

The question then recurring upon the amendment offered by Mr. Lord, it was put, and there were, upon a division—ayes, 30; noes, 136.

So the amendment was rejected.

Mr. ALVORD, for Montague. I move to amend the resolves by striking out the last one, which is as follows:—

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Mr. SIMMONS called for the yeas and nays upon the motion, but they were not ordered, twenty members only voting in favor thereof.

The question was then taken upon the amendment, and there were, upon a division—ayes, 25; noes, 143.

So the amendment was rejected.

Mr. WILSON, of Natick. I now move to strike out the words "and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority," in the following third resolve:—

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

The PRESIDENT. The amendment is not in order, because the Convention have decided that the resolve shall stand as it is.

Mr. GILES. Is it in order to move to strike out and insert?

The PRESIDENT. It is.

Mr. GILES. I then move to strike out the same words moved to be struck out by the gentleman from Natick, (Mr. Wilson,) and to insert in lieu thereof the words "according to their will legally expressed."

The question was taken, and the amendment was rejected.

Mr. LORD. I move to amend the first resolve at the same place where I moved to amend it before, by inserting the words "and if the number of affirmative votes shall be at least, in number, one-third of the whole number of votes cast for governor, at such election."

The PRESIDENT. The Chair is of opinion that the amendment is substantially the same as the one before offered by the gentleman, but the Chair will put it to the Convention.

Mr. LORD. I demand the yeas and nays upon it.

The yeas and nays were not ordered.

The question was then taken, and the amendment was not agreed to.

The question then recurring upon the final passage of the rosolves,

Mr. GILES, of Boston, asked for a division of the resolves, so that the question should be taken on the last resolve by itself.

The question was then taken upon the final passage of the first and second resolves, and it was decided in the affirmative.

The question was then taken upon the third resolve, and there were upon a division—ayes, 142; noes, 64.

So the resolves were passed.

Mr. SCHOULER. I now move to reconsider the vote by which the last resolve was passed, and I do it not for the purpose of consuming the time of the Convention, for I am as anxious as any one to finish our labors. But I do not believe that this Convention would pass the third resolve, if they wholly understood it. Nearly the whole debate has been upon the mode of choosing delegates, and this third resolve has not been considered at all. I think if gentlemen will look at it, they will see that it is nothing more or less than legalizing anarchy.

Mr. STETSON, of Braintree. I rise to a question of order. I desire that the motion to reconsider be placed upon the Orders of the Day for to-morrow, under the rule.

Mr. SCHOULER. Then I move to suspend the rule, in order that the motion may be taken up and considered at this time.

The question was taken, and the motion was agreed to.

Mr. SCHOULER. Now, Mr. President, I ask the attention of the Convention to this third resolve. I should like to have some gentleman who advocates it, explain what it means. If it means anything, it means nothing but anarchy. Without any form of law, any number of men in this Commonwealth may call a Convention to amend the Constitution. What does it say? It is this:—

The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

What does that mean? Are the people in their sovereign capacity to make any kind of change outside of the legislature, and without its being done by legislative rules? Are we to have a form of law in calling a Convention, or shall an unlegalized mass of people call a Convention? If the gentlemen who advocate the resolve can explain what it means, will they tell us what that meaning is. I know a majority of this Convention will go for no such thing, if they understand it. If there is to be a Convention, it should be under legal forms, there must be a vote, and that vote should be legally given, and legally returned, and these can only be had under law. Now, I want to know if this resolve does not mean something else? Perhaps gentlemen who are anxious about this matter, can tell what it means.

Mr. LORD, of Salem. Before the gentleman for Wilbraham answers the questions, I desire to know if the gentleman for Wilbraham should draw up a subscription paper to this effect: "We hereby agree that the Bill of Rights be stricken from the Constitution," and should get the signatures of a majority of the people of the Commonwealth, whether that would not alter the Constitution, for the Bill of Rights is a part of the Constitution. The resolve says:—

The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

If it means anything, it means that if I should get the subscription of a majority of the people of the Commonwealth to such a paper, that would alter the Constitution. I desire that gentlemen who voted this thing through with a rush, without giving us the yeas and nays, should hear my protest against altering the Constitution by a subscription paper. If that resolve does not mean that, it is meaningless. Anything which shall get the full opinion of the people, will alter the Constitution. Now, Sir, I am not going to ask the yeas and nays upon this proposition, because the Convention have made up their minds not to do anything of that kind, if I may judge from the vote just passed.

But I desire that it shall not pass without my protest. If the Convention would only allow me to record my vote upon a question so important as this, I should not trouble them with these remarks; but, upon a question which legalizes anarchy and confusion, if I cannot be permitted to record my vote, I may be permitted to protest against it.

Mr. WHITNEY, of Conway. I hope the motion to reconsider the vote by which the Convention adopted the resolution, will prevail, but not for the reason given by the gentleman from Salem, (Mr. Lord). Sir, if this resolution has any effect at all, its effect will be as the gentleman from Boston, (Mr. Schouler,) has said, to introduce anarchy and misunderstanding of what is the proper mode of proceeding when the people desire to revise the Constitution. What does the resolution provide for?

*Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity.

Now, I take it, that if the people have "reserved rights," they cannot be interfered with if the resolution should be rejected, for those rights are not only reserved, but it is declared elsewhere in the Constitution, that rights not granted are "reserved rights." I think they are more fully provided for; and, therefore, this resolve so far is worthless, and will have no effect at all. But the resolve goes on:—

And by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Now, Sir, we have provided in a preceding resolve, for calling a Convention to revise the Constitution. We have provided that the people shall vote upon the question for calling a Convention at certain specified times, and at any other time when the legislature shall see fit to submit the question to the people. So that we have provided already, that every twenty years, and as much oftener as the legislature think proper to submit the question, a legitimate mode for the people to "reform, alter, or totally change that Constitution and Frame of Government," as they may choose, shall be had. And now, I ask, what do you want more? Why indicate that these are not the proper modes of accomplishing that result? As the gentleman from Salem said, by this resolution the people may alter and reform the Constitution by circulating a subscription paper, or in any other way. Sir, it does seem to me that this re-

solve is only calculated to lead to misunderstanding among the people as to the proper mode of revising the Constitution.

I agree that the major will of the people have the right "to alter, reform, or totally change their Constitution and Frame of Government" at any time. I go as far as the gentleman for Wilbraham in support of that doctrine; but, I wish to provide some definite and proper method by which the will of the people shall be expressed and ascertained, and that we have provided in the preceding resolves. Now, I repeat that this resolution is either worthless, or else it means to legalize undefined action. Why, Sir, what, I ask again, is there in the foregoing resolutions, that is calculated to "impair the reserved rights of the people in their sovereign capacity?" I can see nothing that takes away these rights. I hope the motion to reconsider will prevail, and that the resolve will be stricken out.

Mr. HOOPER, of Fall River. I hope this resolve will be retained, as it seems to me there are sufficient reasons why it should be. The first two resolves are framed to provide for calling a Convention upon the basis of the House of Representatives, as agreed to in this Convention. Now, Sir, no man can say, at this day, what will be the practical operation of that basis in future. It may be, that under the system we have adopted, within twenty years from this time, a majority of the House of Representatives can be elected by one-fifth, or even one-eighth of the people. I believe it may so work, and if it does, and a Convention is called on the basis of the House, as these resolves provide, one-fifth or one-eighth of the people will elect a majority of that Convention. Now, Sir, did you ever know any man, or set of men, voluntarily to give up political power? Suppose a Convention should be called upon such a basis—do you suppose the majority of that Convention, representing one-fifth or less of the people of the Commonwealth, would adopt measures that would allow the whole people to be equally represented? No, Sir; it would be in Massachusetts, as it was in Rhode Island, several years ago, when the agitation commenced there. One-fifth of the people there elected the legislature, and whenever a Constitutional Convention was called, it was always upon the same basis as the representative body that called it, to reform the Charter and establish the Constitution. But, Sir, the minority held the power, and they never gave it up till compelled, which they were in part, by the Dorr Rebellion.

Now, Sir, we may be under the necessity, at some future time, of calling a Convention outside of the government; and there is something here upon which we could found such a proceeding, should it ever be found necessary for the purpose of equalizing representation. I, for one, hold the doctrine declared in that resolution as a sound one. It is the doctrine by which, in 1842, we carried the State of Massachusetts; and it is one I am unwilling to give up at this time. I hope, therefore, that this vote will not be reconsidered, but that this resolve will be permitted to stand as it was passed, and that the rights of the people will be declared to be beyond the power of the legislature, or any other power, to overthrow them.

Mr. STEVENSON, of Boston. I have no intention of occupying the time of the Convention for a single moment. I rise simply for the purpose of making an inquiry. This resolve, which it is proposed, and which the Convention have once voted to put into the Constitution, makes a requirement concerning alterations to the Constitution. Now, I desire to ask the gentleman who proposed the resolve, who are to be the judges of whether that requirement has been complied with; who is to judge whether the "will of the people" has been fairly collected? It seems to me we have made a requirement, and put it into the Constitution, without any conceivable tribunal to determine whether that requirement has been properly complied with. I hope, therefore, for that simple reason, if for no other, that this vote will be reconsidered, and that this resolve will be stricken out.

Mr. MILLER, of Wareham. I suppose there is no member of this Convention who is more willing that those who come after us shall have full power to alter and revise this Constitution, whenever it shall be the wish of a majority of the people so to do, than I am. I also believe, that there is not a man in this Commonwealth—no sober, wise, and discerning man—who would desire, for a moment, to put any provision into the Constitution which may hereafter be so construed as to have a tendency, in any manner, to produce collision, war, and bloodshed. I believe there is not a man in the Convention who would be willing to put anything in the Constitution which could possibly lead to such a result; but that it is the wish of all, that hereafter, we may have peace and quietness in all our borders.

Now, I ask, if, aside from this resolution, we have made all the provision that any reasonable man could require, for the alteration of the Constitution at any future period of time? In the first place, we have provided, that once in twenty years, the people of the Commonwealth shall vote upon the question, whether they will have a Convention to revise the Constitution, or not. That

is one mode. Again, you require, by a second section, that whenever one-third of the voters in the various cities and towns of the Commonwealth declare their wish to call a Convention, it shall be the duty of the legislature to call a Convention. And again, in the same section, it is provided that the legislature may, at any time they may think proper, submit the question to the people. Now, it seems to me, that this is making all the provision that it is desirable to make, for this purpose. All any man wants is a guarantee to those who come after us, that they shall have control of the matter, and that is provided in the previous resolves. I submit, that this third resolve can produce no good result that will not be produced without it, and that it may, if adopted, lead to the most disastrous consequences. I shall, therefore, vote against it, when the question comes up; and I hope every member of the Convention will do the same. Let me call the attention of the Convention to the phraseology:—

3. *Resolved*, The foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, and by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority, at all times, to reform, alter, or totally change their Constitution and Frame of Government.

Now, suppose some distinguished man in the city of Boston should write to the selectmen of every town in the Commonwealth, to take the vote of the people upon the question of calling a Convention, and suppose one-fourth of the people of the State should, in that manner, express their opinions in favor of calling a Convention — if there was a majority of all the votes given, it might be considered as the will of the people, fairly collected, and they might go on and form a Constitution; and we might thus have two governments going on at the same time. It might lead to civil war and bloodshed. I hope we shall not have any such provision put into the Constitution.

Mr. GILES, of Boston. I wish to state one or two reasons why I want this vote reconsidered for the purpose of amending the resolution. My friend for Wilbraham, (Mr. Hallett,) knows that I go with him in the object he seeks to accomplish; but my objection to this third resolution is, that it is a limitation upon the Bill of Rights as it now stands. So far as it can have any legal or constitutional effect, it is to restrict the rights of the people as they are now secured to them. It is impossible to declare the absolute and inalienable right of the people to reform, alter, and amend their Constitution in stronger language than is used in the Bill of Rights, as it now stands, to wit:—

"Therefore, the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

Now, when it comes to that pass, and the people undertake to exercise that right, I do not wish to impose upon them any restriction. I will allow them to exercise it in any manner they may see fit; and posterity will judge for themselves what that manner shall be when the emergency shall arise. When it shall become necessary to assert that right outside of the Constitution, the people will exercise it according to their sovereign will; and I do not wish to restrain them by saying that they must do it by such mode of proceeding as shall fairly collect the will of the majority. I will leave that right to their sovereign pleasure.

Another objection is this: By this resolution you will place the people of the Commonwealth, if they should ever have occasion to exercise this right, in a position of hostility against their own government. You will have a Constitution *felo de se*, and may set the people to cutting their own throats by law and Constitution.

These are my objections. I do not wish to take up the time of the Convention by elaborating them.

Mr. WILSON, of Natick. Mr. President: I hope the motion made by the delegate from Boston, (Mr. Schouler,) will prevail—that this resolution will be reconsidered, and either amended or stricken out altogether. By the provisions of the 7th article of the Bill of Rights, "the people alone have an incontestible, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

That is an unlimited and unqualified admission of the right of the people, to alter, or amend, or abolish altogether their government whenever they shall see fit. There is no qualification or limitation whatever of this right, and they are the sole judges of the whole question—of the time and mode. Now, by the provisions of this resolution, we repeat this doctrine, but we repeat it with limitations and restrictions. Sir, I am opposed to putting qualifications or restrictions upon the sovereign rights of the people of this Commonwealth or of this country, to change, or modify, or alter, or abolish their government whenever they may see fit to do so—whenever they believe their happiness will be promoted by so doing.

I therefore hope this third resolution will be reconsidered, and either stricken out altogether, or amended by striking out all after the word "capacity," down to the words "at all times," so that the resolution would read:—

*Resolved*, That the foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, at all times to reform, alter, or totally change their Constitution and Frame of Government.

This is the achieved American doctrine.

It will then be but a repetition of the declarations laid down in the 7th article of the Bill of Rights. But I am opposed to putting anything into this Constitution that shall limit or restrict the people in the exercise of their sovereign rights and powers. I hope that amendment will be made, or that the section will be stricken out altogether, and that this Convention will not put into the Constitution any provision that shall limit the rights of the people, declared in the 7th article of the Bill of Rights, which was placed there by the men of 1780, who laid the foundations of our Constitution upon the eternal doctrine of the unlimited sovereignty of the people and the equal rights of man.

Mr. HALLETT, for Wilbraham. I certainly have no desire to limit the power of the people. I never heard that accusation brought against me before, in my life. The trouble generally is with those who differ from me on the principles of government, that I want too little governing power, and too much liberty for the people. Sir, I am not alarmed about the probable fate of this resolution. The great principle of success in life, is the calm perseverance of moral courage. When you have fixed upon a sound principle, be not pertinacious, nor dogmatical, but patiently persevere, and you must carry it through. If you cannot do it to-day, wait until you can carry it; to-morrow, or next year, or, if need be, the next generation. Now here is a sound principle. If we cannot secure the adoption of this principle now, it will grow, and there will be those who will try it again, twenty years hence, in another Convention. That is my position in relation to all the great principles of government which I have endeavored to maintain here. If gentlemen vote them down, I am not voted down; it is the principle which the Convention has voted down. I am nothing to this principle, nor do I consider myself in any personal manner identified with its success. But, Sir, if this principle does not prevail now, I am satisfied it will prevail at some future time. What is it? The gentleman from Natick misunderstands it. He says, the Bill of Rights declares that the people have at all times the right to alter, amend, or totally abolish their frame of government. That is all very well said, but when you come to the point, how is it to be done? The answer, and the only answer is, either by the bayonet, or by the will of the majority. Now, how will the gentleman get at the will of the people in spite of the bayonets? I hold to the right of revolution by the bayonet; but I hold to the right of peaceful revolution also, by the ballot-box. And how are you to accomplish a peaceful revolution? Why, by fairly and fully collecting the will of the majority of the people. That every-body pretends to believe in, but when you undertake to collect the will of the people, where there is not an express law for it, then comes the bayonet. Sir, I maintain that the people of this Commonwealth, have the right peacefully to assemble and express their wishes in relation to any change they may desire in their government, and that the will of the majority in making organic laws, is the will of the people. But, if the legislature, or the government, will not let the people express their will peacefully, but declares martial law, and pronounces the people's assemblies riotous; of what practical use is that declaration in the Bill of Rights?

What is the gentleman going to do with the people's right to make a Constitution? We are all for the people's rights on paper; but when it comes to the action of this sovereign people without the consent of their servants, the legislature, what will the people's rights do for us when they are like a flock of sheep, with an army sent after them from Washington to put down domestic violence proclaimed by your governor? I wish to carry out in this new Constitution, the principle of Mr. Buchanan, laid down in the Michigan case, in 1836; and that is a sufficient answer to the gentleman from Salem. This is what Mr. Buchanan says, touching this very question of the people having a right of revolution without being obliged always to fight for it.

"Is it the position, that if in any one of the States of this Union, the government be so organized as utterly to destroy the right of equal representation, there is no mode of redress but by an act of the legislature authorizing a Convention, or by open rebellion? Must the people step at once from oppression to open war? Absolute submission or absolute revolution? *Is there no middle course?* This is found only in the principle established by the whole history of American government, that the people are sovereign, and that a majority of them can alter or change their fundamental laws at pleasure. This is neither *rebellion*, nor *revolution*. It is an essential, recognized principle in all our forms of government."

That is the doctrine of James Buchanan, a man who knows something about the government of this country. And this I hold is the true doctrine of American liberties. I deny, emphatically, that in changes of government, the people of the States, in this Union, hold the "sacred right of revolution," subject to be hanged for treason if they fail? This is the right of serfs and slaves. American citizens claim a higher right, unalienable and practical as a great political right. Not a mere physical right of revolution by force, which, whenever resorted to must be at the risk of all the penalties attached to an unsuccessful resistance to established authority.

For, if the people of a State are practically denied a change by revolution, and can get no change without the previous consent of the legislature, the *legislature* and *not* the people are sovereign in government; and in practice, whatever may be our theory, we are not a free people.

Hence, if you would have a popular sovereignty, that can act without a conflict of blood with the government, you must take care to provide for it in the organic law, so that the legislature cannot make it treason, or the executive call in the military power of the United States to put it down as a case of domestic violence.

Now, what do we propose in this amendment? Merely to provide that the people may lawfully do what the supreme court of the United States, in the Rhode Island causes, were obliged to admit, that if, in any Constitution or law of that State it had been provided the people might do, would have established a popular government in Rhode Island. They decided that there must be recognized as lawful in the people, some form of proceedings by which they could fairly and fully collect the will of the majority. And because there was no such form recognized in Rhode Island, the courts of that State pronounced the choice of delegates, the holding of a Convention, and all the meetings—the primary and town meetings—lawless assemblies; and the supreme court of the United States followed the decision of the State court. That is, the decision which renders the Bill of Rights a mere rhetorical flourish. I want a shield in the Constitution to cover the rights of the people against any such legal construction to render those rights inoperative. You say that, by the Bill of Rights, the people have a right to meet and petition, or vote a Convention; but what if the courts pronounce that a seditious meeting, because there is no law for it! you have no appeal but to arms. But if you declare in the Constitution that the meetings of the people shall be lawful, and may be held in such a mode as will fully ascertain the will of the majority, then if the people meet in town meetings, and endeavor peaceably to ascertain the will of the majority, the government cannot send an army to shoot them down, or read the riot act to disperse them; and the courts of the country must put a construction upon such a constitutional provision that will enable the people to ascertain what is their will, and whether a majority are in favor of holding a Convention, or changing their form of government. That would, doubtless, be an extreme case, but that is the right of the majority, or the majority has no right to make or change government.

Now these three resolutions render the whole system perfect; and if gentlemen will only adhere to them as they have adhered to them before, in their votes, I am sure we shall go out from this Convention with a more honorable and effective declaration as to the rights of the people in government, than was ever before laid down. First, we have proposed a mode for revising the Constitution periodically, every twenty years, without asking the legislature beforehand to do anything. We have a second resolution, which authorizes one-third of the voters of the Commonwealth to make a proposition requiring the legislature to put the question to the people on calling a Convention; or the legislature may put out a proposition, at any time they see fit, for calling a Convention. And lastly, comes behind that, the great reserved sovereignty of the people; and we simply say, in that declaration, that when the people assemble together for the purpose of collecting and executing their will, they shall not be pronounced rebels, but shall be recognized by the constituted authorities. Adhere to these provisions, and you will ingraft a great American principle upon the Constitution, and other popular governments will hereafter follow your example, until revolution will mean something more than bayonets and bloodshed.

Mr. SCHOULER, of Boston. If the Convention understand the definition given to these resolutions by the gentleman for Wilbraham, and the gentleman from Fall River, I think they will agree with the gentleman from Natick, that this motion of mine ought to prevail. There will be nothing but anarchy and revolution in the Commonwealth, if the resolutions are adopted, according to the argument of both the gentlemen, (Messrs. Hallett and Hooper). These gentlemen want something outside of the Constitution; and when you go outside of the Constitution, you go to anarchy. If the advocates of the higher law like that, I am not one who does. I know no right, not given by the statute and common law of the country; and if they are going to put

these resolutions into the Constitution, so as to make anarchy whenever a portion of the people wish to call a Convention, I want the sober sense of this Convention to understand it, and let them see whether they will vote for it or not. I do not want to legalize a Dorr Rebellion, in the Constitution of Massachusetts; and that seems to be the object of the gentleman for Wilbraham, in a number of motions which he has made. I do not know what he said at that time, but I do say that, so long as we live in a State where we have a Constitution and laws, I am ready to stand by them. I know no way in which we can call a Convention; I know no way in which we can have a liberty worth preserving that is not a liberty founded upon constitutional law and other laws. I do not deny the right of revolution; but there is no use in putting that into the Constitution of the Commonwealth, any more than there is to put in the right to knock another man down, when he comes up to insult you. That is a revolution on a small scale; it is taking the law into our own hands. But we are here forming a Constitution, making a bundle of laws, and laying down principles, and I want nothing revolutionary in it. The gentleman asks if a number of men meet together for the purpose of calling a Convention without any law, whether we shall have to bring out our bayonets to put them down? I believe that if we put nothing of that sort into the Constitution, there are no men in the State so foolish as to attempt it; and yet the gentleman who thinks that such a principle as that is such a wondrous stretch of power, if a poor fugitive slave should come to Boston, would think we had a revolution, and we might hear of troops coming from Washington to Boston, to put it down by martial law, as we did hear about it a few years ago.

I say these resolutions are not required in the Constitution, that they will produce nothing but anarchy, if carried out; and that seventh resolution, of which my friend from Boston speaks, I do not understand as he does. I say that every article in the Bill of Rights, and in the Constitution, is intended to be carried out legally. The framers of the Constitution of 1780 never meant that there should be any such assemblies, not recognized by law, to overturn the State. The people have the power, I admit; but when they express their voice and will, it is to be done through legal means and legal forms of changing the Constitution, and, unless it is done so, it is only a mob which acts, and I do not believe the framers of our government ever meant that mob law should rule in Massachusetts.

I acknowledge the right of revolution, but that is not what is attempted; the attempt is to ingraft into the Constitution a provision by which every act of the government can be overturned by an unauthorized body, acting without law. I say the minority have rights which are secured by the Constitution and law, and if it was not for preserving the rights of minorities, there would be no necessity for any Constitution or any law. And we ought to guard, and we do guard, the rights of minorities; and, in making constitutional law we should preserve ourselves from the reproach of instituting any mode by which our government can be changed or overturned by a number of men collecting on Boston Common, or on Sudbury Meadows, or anywhere else, and saying they are the people, and the Constitution must be overturned. I know of no such right; and I say, that if this is put into the Constitution, it will not be worth having, and it ought to be kicked and spurned by the people of Massachusetts, instead of being adopted by them.

Mr. ALLEN, of Worcester. If the Convention is not too tired of this debate to listen farther, I will make a remark or two on the subject. The condition of Massachusetts and of Rhode Island a few years since, are very unlike. The people of Rhode Island, I understand, wanted to frame a constitutional government. There was no provision, by any fundamental law, by which a Convention could be called. The legislature refused to present the question to the people. They had no remedy, except to resort to irregular modes, to express their opinion in favor of a Convention and a Constitution. Therefore they proceeded in the way and manner which was left to them, and acted and voted upon the subject. Whether that was the wisest course or not I will not now undertake to say, or to give any opinion with regard to the proceedings of that day in Rhode Island, except this: that they were under restraints which, I think, were of an unreasonable character; that the government having delayed too long, by far, to call a Convention, or submit the question of calling one to the people, drove the people to seek by other and irregular modes a way of carrying out their intentions.

But that is not the condition of things, and has not been our condition, in Massachusetts. We declare, in the Bill of Rights, the principle that the people have a right at all times to change their government. We provide a way by which amendments may be made by successive legislatures submitting amendments to the people. Then we provide for a revision of the Constitution, on the question whether the Constitution shall be submitted to the people once in twenty years. That must be done absolutely. Farther

than that, we provide that upon application of a small portion of the people to the legislature, it shall be the duty of the legislature to submit the whole question to the people at any time, either in one, five, ten, or twenty years. We have provided, in this way, in the most ample manner, without the adoption of these resolutions, for amendments to be made to the Constitution whenever the people shall desire it; not in one way or manner, but in several.

Having done that, it seems to me to be unnecessary to go farther, and unwise to say that the people, or any part of the people, may depart from the modes prescribed in the Constitution, and by any irregular action, altogether unnecessary, determine that we shall have a new Constitution, or shall have a Convention for the purpose of revising the existing one. Sir, the reasons which might render such action proper in Rhode Island, would render it altogether indiscreet and unwise, and, I apprehend, wrong, in Massachusetts. Suppose this Constitution could be adopted, and the people of Massachusetts, or any portion of the people, in the western part of the State for instance, should desire a revision of the Constitution; what course would I recommend them to take? Would I recommend to them to hold caucuses in some portion of the interior of the State, and request, through that caucus, that the selectmen, without the authority of law, would convene the people of their several towns, and in that way obtain the opinion of the people in respect to the proposed revision of the Constitution, leaving it, of course, to the selectmen of the several towns to call or withhold the meeting at pleasure; so that in some portions meetings would be held, in others not; in some towns in one manner, and in others in an entirely different manner? The result would be confusion inextricable. The true sense of the people might not be known in regard to the matter. But let them take either of the means pointed out in the Constitution, let them pass a law, such as the Constitution directs for calling a Convention, and then the whole subject will be fairly before the whole people of the Commonwealth, and, through the forms of law, and through the constituted officers of the people, their sense is taken, not of one section only, but every part of the State, with regard to a change of the Constitution or a Convention for its revision.

It seems to me that the insertion of a general provision, like that contained in the third section, which may enable portions of the people to set aside the regular and orderly mode of ascertaining public sentiment, pointed out in the Constitution, and to resort to some other mode not contained in the Constitution, and undefined, would, so far from promoting the rights of the people, tend to bring those rights into great jeopardy; for the result would be, that it would be contended that the people were desirous of an amended Constitution, founded upon the action of this portion of the State and another portion of the State, and still founded upon the irregular returns of irregular meetings; and the result might be, that great injustice and evil might be done; that a false idea might be presented on the issue, and a Convention might be called, or rejected, through an entire misapprehension of public sentiment.

Sir, if there is any act to be done by the people of the Commonwealth, peculiarly solemn in its character, it is that of a revision of their fundamental law. Let it be done, then, by all means, in a regular and orderly manner; let there be no let nor hindrance to the people, and yet let the mode be through the forms of law, through the agency of constituted and sworn officers of the people, so that the true sense of the people may be ascertained, and that the act which purports to be theirs may be in conformity with their deliberate and solemnly expressed will, through regular channels and constituted organs.

Sir, if we are obliged to resort to irregular modes to obtain redress of grievances, or ascertain the will of the people as to the necessity of a change of the Constitution, then, I say, resort to it, even to revolution; but while no such necessity exists, and while the way is open, I would no more say that the Constitution should be revised, except in certain modes pointed out by the Constitution, than I would say that your selectmen, or your representatives, might be elected either according to the mode indicated by the Constitution, or by any other manner which the people may designate.

Sir, I hope the Constitution, being entirely sufficient to protect the rights of the people, we shall not jeopard those rights by attempting an unnecessary act, by inserting in the Constitution a provision which leads, it seems to me, to anarchy and to the practice of fraud with regard to the sentiments of the people, while it will in no way promote their honest will.

Mr. KINGMAN moved the previous question, which was seconded, and the main question was ordered to be now put.

The question being then taken on the motion to reconsider, on a division, there were—ayes, 195; noes, 33—so it was agreed to.

Mr. ALLEN, of Worcester, moved to amend the resolves by striking out the last one.

The PRESIDENT stated that this motion had already been put once and negatived.

Mr. ALLEN. If it is in order, I move to re-

consider the vote by which the Convention refused to strike out the words standing as the last resolve.

The PRESIDENT. That motion is in order, and the question is on the motion to reconsider.

Mr. HOOPER, of Fall River. I am in hopes that this resolve will not be stricken out; and I wish to recall to the minds of gentlemen the doctrine which has been put forth in Massachusetts, and which, in 1842, received the sanction of the people of Massachusetts. For the purpose of refreshing the memories of members of this Convention, the names of many of whom I find attached to this document which I hold in my hand, I wish to read the doctrine which was then put forth and made the issue of that election, and which received the sanction of the people of the State; and I ask gentlemen if it is not precisely the doctrine contained in this resolve:—

"Throughout the country, parties have divided upon the Rhode Island question. They have done so because it involves the great American principle that lies at the foundation of all free government. Both parties have heretofore professed belief in the sovereignty of the people. This question has demonstrated that if the Whig party hold to this principle in theory, they deny it in practice.

"The details of the Rhode Island question, or the conduct of the respective parties, is not the issue between those who take opposite sides on that question. The principle that lies at the threshold is, whether the maxim laid down by Thomas Jefferson, in the Virginia Bill of Rights in 1776, and substantially adopted by every State in the Union, not excepting Rhode Island herself, is true, namely: 'A majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government in such a manner as shall be judged most conducive to the public weal.'

"This, we hold to be the American doctrine of government. To restrict it to anything less than a majority, so as by any form of existing laws or limitations of suffrage, to compel the majority of the citizens of a political community to ask the consent of authorities chosen by a qualified or a favored minority, to alter, reform, or abolish the government, is to run into the doctrines of the legitimate governments of Europe.

"The doctrine now avowed by the most prominent men in the Whig party, is, that it is unlawful for the people of Rhode Island to frame a Constitution unless by consent of the legislature.

"This is the precise doctrine of the Holy Alliance, put forth in the famous Layback circular, upon the restoration of the Bourbons:—

"'In the name of the most Holy and Indivisible Trinity, their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia, solemnly declare, that useful and necessary changes in legislation and administration ought only to emanate from the free will and intelligent conviction of those whom God has rendered responsible for power. All that deviates from this line necessarily leads to disorder, commotions, and evils far more insufferable than those which they pretend to remedy.'

"We can see no distinction between this doctrine of 'legitimate' government, and the practical application of it by the governor of this Commonwealth, and the leaders of the Whig party, to Rhode Island. They care not whether the Constitution was adopted by a majority of the whole people or not. Their only question is, did the Constitution emanate from the free will of the constituted authorities, 'those whom God has rendered responsible for power'—the charter assembly? If not, they hold it void, and all who acted under it, rebels.

"These are general principles applicable to the great American question, involved in the recent struggle of the disfranchised majority of the free people of an American State, to obtain for themselves equal rights with the minority in the choice of her rulers. It seems to us that they must commend themselves not only to every Democrat, but to every man who has an American heart in his bosom. If they are not true, the whole theory of our government is false, and the Layback circular ought to take the place of the American Declaration of Independence."

This is the Address which was sent out by the Democratic members of the legislature in 1842, and made the issue before the people at that election; and it then received the sanction of the people of Massachusetts. As I remarked, there are the names of quite a number of the members of this Convention attached to this circular, but I will not read them. It is asked, who shall be the judges upon this matter? What said Thomas Jefferson? He says: "A majority of the community hath an indubitable, inalienable, and indefeasible right," &c. They are the ones who are to judge in this case. The doctrine of Jefferson places the matter in its true position. Now, I ask the gentleman from Boston, if, upon the principle which he lays down, it may not be safely declared that this Convention is illegally called, and that we are sitting here without any legal authority? And if so, I ask him where he finds the authority in the Constitution for our being here to-day? Where does he find the authority for the initiative steps in calling this Convention? It strikes me that the doctrine which he has advanced, and which his friends have advocated, goes to the full extent of declaring that we are here now without authority.

Mr. SCHOULER, of Boston. If the gentleman desires it, I will answer his question. We came here under the act of the legislature, the representatives of the people; and that is sufficient authority for our assembling in Convention.

Mr. HOOPER, of Fall River. Then let me inquire where the representatives got their authority to pass the act calling the Convention?

Mr. SCHOULER. They got it from the people.

Mr. HOOPER. Very well; the representatives would not have had it unless they had got it from the people. Now, if the people could give this power to their representatives to call a Convention, I want to know why they cannot exercise it themselves; and that is all that we claim in this resolve; more especially if this authority is contained in the original agreement or compact upon which this Constitution was made. I hope that we are not going backwards—I hope that those gentlemen who stood upon this ground in 1842, are ready to stand upon it to-day, and that instead of retrograding, we shall be a progressive party.

Mr. WHITNEY, of Boylston. I do not rise to debate this question at all, but I wish to say that I think it has been discussed about long enough. Why should we spend our time upon this matter? I think I can assure gentlemen who are making provision for other Conventions, that the people will remember us long enough not to want a Convention for a good many years to come. [Great laughter.] That is my judgment about the matter. I do not think that we need to trouble ourselves at all about any other Constitutional Convention for the next ten years; and we have already got a provision so that one can be called in twenty years. I am willing for one, to wait until that time, and if we can get the reforms which we desire then, we shall be more fortunate than I fear we shall be. I remember hearing a story about a woman who said that she was afraid her visitor would never come again; but when the reason was told, it was because she was afraid she would never go home. [Laughter.] I do not know but that will be the way with us. Sir, I move the previous question.

Mr. LORD, of Salem. I would like to make a suggestion to the gentleman from Worcester, for I am exceedingly anxious to hurry the business along, although when I made a motion of that kind, this morning, it was voted down. In order to save the necessity for a reconsideration, I was about to suggest, that the gentleman will accomplish his whole object by simply asking for a division of the question; and, therefore, those who are in favor of the two first resolves will vote for them, and those who are opposed to the last will vote against it. As the previous question is moved on the reconsideration, if he will withdraw that motion, I suppose the previous question will drop through, from having its bottom knocked out; and I do not know that anybody else desires to debate it.

The question being put on ordering the main question, it was agreed to.

The question being then stated on the motion of Mr. Allen, to reconsider the vote by which the Convention refused to strike out the third resolve, Mr. HOOPER asked for the yeas and nays; but they were not ordered.

The question being taken, the motion to reconsider was agreed to.

The question then recurred upon the amendment to strike out the third resolve.

Mr. HALLETT, for Wilbraham, then moved to amend the resolve proposed to be stricken out, by striking out from it the following words: "And by such mode of proceeding as shall fully and fairly collect and ascertain the will of the majority," so that the resolve would read as follows, if so amended:—

3. *Resolved*, That the foregoing provisions shall in nowise restrain or impair the reserved right of the people, in their sovereign capacity, at all times to reform, alter, or totally change their Constitution and Frame of Government.

Mr. BIRD, of Walpole, moved the previous question; which was ordered.

The question being then taken on the amendment of Mr. Hallett, upon a division, there were —ayes, 159; noes, 58—so it was agreed to.

The question then recurred on the motion of Mr. Alvord, to strike out the third resolve, as amended; and the question being then taken, upon a division, there were—ayes, 158; noes, 89 —so it was agreed to.

The PRESIDENT. The question is on the final passage of the resolves, and on that question the Convention has ordered the main question.

Mr. HUBBABD, of Boston. I call for a division of the question—that is, that the question be taken upon the resolves separately.

The PRESIDENT. The Chair stated on a previous occasion, that the resolves were not divisible; but upon a more accurate examination, he is now of a different opinion.

Mr. LORD. I desire to inquire, whether at any time the yeas and nays have been taken upon these resolves?

The PRESIDENT. The Chair understands that they have not been taken upon the final passage.

Mr. LORD. Have they been taken upon any stage of them? My opinion is, that they were passed last night without a quorum being present, and that the yeas and nays have not been taken in any stage of these resolves.

The PRESIDENT. The yeas and nays have been had on amendments.

Mr. LORD. But I desire to have them on the final passage; and as a division has been asked for, and the question is to be taken upon each resolve separately, I will say, that I merely desire the yeas and nays on the first resolution.

The question being taken on a division, on the demand for the yeas and nays, there were—ayes, 59; noes, 198.

So the yeas and nays were ordered.

*Report from a Committee.*

Mr. MORTON, of Taunton. There is a matter which was specially referred to the Judiciary Committee, and they were authorized to sit during the sessions of the Convention. They have prepared a Report which is of some length, and it is of a good deal of importance that its purport should be known, so that it may go before the Revising Committee. It is supposed to be necessary to print it, and, I therefore ask the unanimous consent of the Convention, to submit the Report at this time, because it will farther the progress of business very much.

No objection was made, and the Report was read, as follows, and ordered to be printed :—

1. *Resolved*, That persons holding office by election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided*, *however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provision shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time, for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices and Justices of Police Courts: *provided*, *however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of Governor, Lieutenant-Governor, Councillor, Senator, member of the House of Representatives, and town and city officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided*, *however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

*Dispensing with Yeas and Nays.*

Mr. FRENCH, of New Bedford. The motion for ordering the yeas and nays was not understood in this part of the Convention, and the number above one-fifth was so small that we think the yeas and nays might be dispensed with. I think that those gentlemen who voted for ordering them will not insist on the demand. I therefore move a reconsideration of the vote by which they were ordered.

The motion was rejected.

*Mode of Voting at Elections.*

Mr. WILSON, of Natick. I move that the Orders of the Day be laid upon the table, for the purpose of taking up the motion of the gentleman from Walpole, (Mr. Bird,) to reconsider the vote by which the resolves on the subject of elections by plurality, &c., were finally passed.

The motion to lay the Orders of the Day upon the table was agreed to.

Mr. BIRD, of Walpole. I made this motion, Mr. President, in the hope that if the reconsideration is accorded, either myself or some one else might propose some amendments which would make the resolves more acceptable to the Convention. I believe that that can be done, and for the purpose of indicating what the amendments I propose to offer are, if the motion to reconsider should be carried, I will, with the permission of the Convention, read what I propose to do. I shall move to amend the first and fourth resolves, so as to read as follows :—

1. *Resolved*, That it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law, but no such law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected

by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be elected.

4. *Resolved*, That in the election of all city or town officers such rule of election shall govern as the legislature may by law prescribe.

Without saying anything farther in relation to this matter, I will only express the hope that the vote carrying these resolves to their final passage may be reconsidered, and then I will present these amendments in their order, and say a very few words explanatory of the object of each amendment.

The question being taken on the motion to reconsider, it was, on a division, decided in the negative—ayes, 112; noes, 118.

So the motion to reconsider was rejected.

Mr. DAVIS, of Plymouth. I believe that the question on the last vote was not properly understood—I mean on the motion to reconsider. I think some gentlemen near me did not understand it.

The PRESIDENT. The attention of the Chair has been called to the result of the vote. The gentleman from Plymouth will pardon the Chair till the vote is again announced. Several gentlemen have expressed the opinion that the announcement of the Chair was incorrect; but on a second examination of the figures, the Chair finds that the vote was correctly announced.

Mr. DAVIS, of Plymouth. I understand from several gentlemen in this quarter, that the question on the motion to reconsider was not distinctly understood, the gentleman from Walpole (Mr. Bird) not being distinctly heard. If it is in order, I would like to move that the question be taken again.

The PRESIDENT. It can only be done by general consent.

Mr. LORD, of Salem. I object.

Mr. DAVIS. Then I call for the yeas and nays.

The PRESIDENT. The yeas and nays may be taken, if they are ordered by the Convention.

Mr. LORD. Do I understand the President to decide, that the yeas and nays may be taken after a formal announcement of the vote on a division of the House?

The PRESIDENT. They may. The yeas and nays are for a verification of the vote taken by count. The Chair has no doubt whatever, that in this state of the question, before proceeding to the consideration of any other business, the yeas and nays may be ordered. This has been repeatedly done during the session of the Convention, and the recollection of the Chair is, that it has been done on the demand of the gentleman from Salem himself.

Mr. LORD. Never upon any motion of mine.

The PRESIDENT. The Chair may be in error as to that, but such is the impression of the Chair at this moment.

Mr. LORD. I may have called for the yeas and nays before the vote was verified by a count, or I should say before the result of the count was announced, but never after the announcement; for I did not conceive it at all possible that it could be done according to parliamentary usage. I suppose it is not competent for any member who has voted affirmatively or negatively in a count, to change his vote when taken by yeas and nays, for the purpose of changing the result. With such a practice, we might go on, *ad libitum*, and results might be changed in this way, at any time.

Mr. ASPINWALL, of Brookline. I understand that there is no motion before the Convention. The question has been taken on the motion to reconsider, and, on a division, was rejected. That, if I understand anything, entirely disposes of that matter.

The PRESIDENT. The gentleman from Brookline overlooks the fact, that when the question was first taken on the motion to reconsider, the Chair declared the vote to be in the affirmative. A division was then demanded, and, a count being taken, the vote was declared in the negative—there being a majority of six against the reconsideration. And now the gentleman from Plymouth desires that that vote may be verified by the yeas and nays, which the Chair decides to be clearly in order.

Mr. GRAY, of Boston. I dislike to dissent from any opinion entertained by the Chair on a question of order, but I beg leave to suggest to the Chair, that when a vote has been declared on a division, by the Chair, and that vote is not questioned before——

Mr. WILSON, of Natick. I rise to a point of order.

The PRESIDENT. The gentleman from Natick will state his point of order.

Mr. WILSON. It is that the Chair has already decided the point of order, and that it is not farther debatable unless upon an appeal.

The PRESIDENT. The Chair asks the advice of the gentleman from Boston, (Mr. Gray,) and he can accordingly proceed with his remarks.

Mr. GRAY. What I have to say, is, that when a vote is declared, and that declaration is not questioned, the matter is placed on a different ground. I am satisfied, however, with the declaration of the Chair.

The PRESIDENT. The question is on ordering the yeas and nays.

Mr. DAVIS, of Plymouth. Before the yeas and nays are ordered, I should like the gentleman from Walpole to restate the object of his amendments, so that they may be understood by the Convention.

The PRESIDENT. It is not in order. The question is on taking the yeas and nays on the motion to reconsider the resolves.

Mr. BUCK, of Lanesborough. Is it in order to have the resolves read?

The PRESIDENT. It is in order. The motion is on the final passage of certain resolves. The gentleman from Lanesborough asks that the resolves may be read. The gentleman has that right.

The resolves were read accordingly.

Mr. BUCK. My object in asking for the reading of the resolves was, that we might vote understandingly. I would like now to hear the amendments read.

The PRESIDENT. It is not in order to read the amendments, the motion being on reconsidering the vote by which these resolves were ordered to their final passage.

Mr. HATHAWAY, of Freetown. Does not this motion to reconsider, open the whole question involved in the resolves?

The PRESIDENT. If the Convention order a reconsideration of the vote, the whole question is then opened. But at present the question is on ordering the yeas and nays, for the purpose of verifying the vote as taken upon a division. The Chair will read the third rule of the Convention.

"He [The President] shall declare all votes; but, if any member doubts a vote, the President shall order a return of the number voting in the affirmative, and in the negative, without any farther debate upon the question. When a vote is doubted, the members for or against the question, when called on by the President, shall rise and stand uncovered till they are counted."

*Question of Order.*

Mr. STEVENSON, of Boston. I am sorry to be under the necessity of stating what I am about to state; but, under the circumstances, I feel it my duty to appeal from the decision of the Chair, as to the power of the Convention again to vote on the motion to reconsider, after that vote has been solemnly declared on a count of the House.

The PRESIDENT. With the permission of the gentleman from Boston, the Chair will again state the position of the question. It is this: The gentleman from Walpole moves the reconsideration of a vote. After stating the purpose for which he makes the motion, the question is put to the Convention, and the Chair declares it to be carried affirmatively. A count is demanded, and being taken, the Chair declares the vote to be in the negative; and the gentleman from Plymouth asks for the yeas and nays. The Chair, considering the yeas and nays merely a matter of verification of the vote by count, admits the motion for the yeas and nays, and from that decision the gentleman from Boston (Mr. Stevenson) takes an appeal. The question, therefore, is—shall the decision of the Chair stand, as the judgment of the Convention.

Mr. STEVENSON. The President is certainly aware, if no others in the Convention are, that I would not appeal from any decision of his, unless I felt in duty bound to do so. I understand the rule of the Convention, and of all parliamentary bodies, to be, that it is the right of any member, when the presiding officer has declared, under circumstances under which there can be a doubt —namely, as where the manner in which the voices of members fell upon his ear—as to what the vote is, then it is the right of any member of the Convention, or of any other parliamentary body, to doubt whether the Chair has decided correctly; and when any such member so doubts, then it becomes the duty of the Chair to make it certain whether or not he has announced correctly what the vote was, by calling upon members to stand up and be counted. That when the Chair has proceeded so far, and has called upon members of the assembly to stand up in their places and be counted, as to how they voted, that then that decision is final, and the vote is passed. And I appeal, not only to the assembly, but to the Chair, and ask him, what the record shall be which the Secretary is bound to make of the proceedings of this Convention, if the decision of the Chair shall now stand? What is the record of the Secretary? That Secretary has already made his record; and if he has not yet made it, he has not performed his duty. What is the record? That the question having been put upon the motion of the gentleman from Walpole, (Mr. Bird,) the Chair decided that it was not a vote; that it was doubted; that a division was called for; that

a division being had, and a count being taken—the thing being made certain—the Chair had decided that it was not a vote, and therefore the motion of the gentleman from Walpole had been rejected. And after that record, what motion is there before the Convention? After that record, what question is there upon which any gentleman upon this floor can get up and ask the yeas and nays of the Convention? If the Orders of the Day be up, I submit, that immediately upon that fact being announced, the next article in the Orders of the Day is before the Convention; and there is no question upon which gentlemen can call for the yeas and nays. Now, let me state a reason why it should be so, if it were not perfectly palpable that it were so. It should be so, if you desire, that in every deliberative assembly, it should be in the power of no man to undertake to alter a vote, under any influence whatever. You desire that each vote which any member shall give, in any deliberative assembly, shall be the honest expression of his own opinions, uncontrolled by the opinion of anybody else. We, four hundred men, have stood up here and given expression, each of us, of our honest opinion, and given that expression upon a motion which our rules declare shall not be reconsidered or reviewed, and then gentlemen ask for the yeas and nays upon the same question. We have each, here in this assembly, voted upon the question, whether or not the motion of the gentleman from Walpole ought to be adopted; and the reason why you have provided in your rules that when an assembly has refused to reconsider a vote, the same motion shall not be presented to them again is, that it operates to prevent your undertaking to take the vote again upon the same question. If it may not be offered again, may it be voted upon again? I ask, if the decision of the Chair stand, what the record is? It will be the duty of your Clerk to declare, upon his record, that this assembly has voted yes and no to the same proposition, and that a proposition, mind you, Mr. President, is completed, which stands as the fact? Will it which your rules declare, when once voted upon, it shall not be reviewed; and, Sir, when that record be the fact, that this assembly have refused to reconsider, according to the record as it stands now, or will it be the fact that they have reconsidered, in case a vote for a different decision be passed? Each of the entries upon the journal of the Secretary states the fact. They cannot both be the fact. Which shall be the record? No, Sir, I do not understand, with yourself—although I am very apt to agree with you in opinion, as you are aware—I do not understand, with yourself, that the purpose of the yeas and nays is to make certain the result of a vote. It has another purpose. The purpose of a division is to make certain the result of a vote. Not only is that so in the understanding of every-body, but it is so according to our rules. When a member doubts, and therefore asks for a division, the rule says, members shall stand in their places and be counted; and when they have done so, and have been counted, that vote is decided. And I ask, whether, under the rule that a motion to reconsider shall not be entertained again, you will entertain it again, after it has been passed upon and decided, and put upon your journal, because it may be stated by the Chair that the yeas and nays are a mode of ascertaining the result of a vote? The yeas and nays are for ascertaining a very different thing. They are not for the purpose of deciding what the result of a vote was; for, Sir, the yeas and nays are called for before anybody doubts what the result of a vote is. The ordinary fact is, that he who calls for the yeas and nays, in a deliberative assembly, is a man who knows what the result of the vote will probably be, or who thinks he knows, and therefore, before anybody can doubt whether the presiding officer has decided correctly as to the result of the vote. The yeas and nays are for a different purpose. After a vote has been decided and gone, there is nothing pending before an assembly upon which a member can ask for the yeas and nays. Your rule is, when any measure is pending upon which a vote is to be taken, one-fifth may order the yeas and nays upon it. That rule is not, Sir, that after the question has been decided by the Convention, the yeas and nays may be called for, to see if you cannot induce some gentlemen to change their votes.

I submit the question contrary to my own wishes, for I voted for the reconsideration. I am impelled entirely by a sense of duty, for I am in favor of a reconsideration; for I wish this assembly would reconsider the vote by which they passed that strange thing. I desire that they should reconsider, and, if possible, put it in the right shape, before they present it to the people. But, Sir, when the presiding officer of this body says that, after the body itself has, by its vote, decided either with me or against me, that another member may to-day, to-morrow, or next week, ask for the yeas and nays on that question, I shall be under the necessity of appealing from any such decision of the Chair. That question has, under our rules, gone out of our possession as completely as if it were a week hence that we were talking about the yeas and nays. If you may ask them now, why not to-morrow, why not on Saturday, why not on Monday? The pur-

poses of the two things are entirely different, namely: the "division," and the "yeas and nays." A division is a right inhering in each member of the Convention. The yeas and nays are a right inhering in one-fifth of the Convention, and in not less. A division is anything which any man who doubts whether the speaker is incorrect in opinion as to which way men voted, can call for. The yeas and nays are a thing which not less than one-fifth can demand. A division, under the rules, is for the purpose of deciding whether a speaker was right or not in declaring the vote. The yeas and nays are for no such purpose. They are for the purpose of informing the constituents of the members how each man in the assembly may have voted on each question before them. The two have different objects and different purposes. They are under different control. And yet, the decision which you have made, Mr. President, depends entirely upon the suggestion which you made at the same time, that the yeas and nays are called for the same reason that a division is demanded. A division may be demanded by any one member. Each of us, as we sit in our seats, have just as much right to our opinion as to whether the ayes or the noes prevailed, as the presiding officer has. The presiding officer has the power to announce to the assembly what he thinks on that one point. He who doubts whether he thinks correctly has the same power which the presiding officer has, and he may not refuse to make it certain which is correct in that respect—the presumption being that each man in an assembly like this votes in the same way, whether he votes in his seat unseen, or rises in his place to be counted.

[Here the hammer fell; the gentleman having occupied the fifteen minutes allowed by the rule limiting debate.]

Mr. STEVENSON. I would ask the Chair whether there is any limitation to debate upon a question of appeal?

The PRESIDENT. The rule of the Convention is as follows:—

*July 16th.* "*Resolved*, That on and after Monday next, no member of this Convention shall speak more than fifteen minutes on any subject, without leave."

Mr. LORD, of Salem. I never, that I recollect, took an appeal from the decision of any presiding officer, with one exception, and then merely for the purpose of expressing an opinion on the subject, and not for the purpose of having the decision reversed. In my judgment it is a matter which should be entertained with a great deal of care, and should be entertained and considered not for any temporary purpose, but as a matter of judicial decision and precedent. To that end it is always usual in any case of importance to settle the appeal upon the record by the yeas and nays. I believe that is the universal practice, and before I sit down, I propose to ask the yeas and nays upon this matter of appeal. But I hope the President will reconsider his determination. I understand that this motion has never been entertained in either branch of congress. Several members of congress, now members of this Convention, have stated that within their knowledge, there never has been such a motion entertained, after the decision was announced, and I have yet to hear the first person state a single instance in which, after the vote has been verified by a count, and after it has been declared, in which there has been no mistake, and in which count there has been no mistake, such a motion has been entertained. I know the question was discussed in the last House of Representatives, and it arose upon the question whether the yeas and nays could be called, after the Chair had called upon the House to divide. The entire minority of that body held that after the Chair had called upon the House to divide, the yeas and nays could not be called, but the Speaker, sustained by a majority of the House, ruled that the yeas and nays might be called at any time before the vote had been verified and announced from the Chair.

Now, Sir, if there is any reason for this rule, I desire to hear it. We shall, of course, hear the reasons of the President, and in order that not only that gentleman but the whole assembly may stand exactly right upon this matter of precedent and law, I move that when the question upon this appeal is taken, it be taken by yeas and nays.

A division being called for upon the motion, it was, by a vote of—ayes, 60; noes, 161—decided in the affirmative.

So the yeas and nays were ordered.

Mr. WILSON, of Natick, moved that the appeal be laid upon the table.

Mr. GRAY, of Boston. I rise to a question of order. Can that motion be entertained? It appears to me that under the rule of the Convention no other business is in order until the question of appeal has been decided.

The PRESIDENT. The Chair will state the question. The question of appeal was pending when the gentleman from Natick moved that the appeal lie upon the table; upon that the gentleman from Boston rose to a question of order, whether it is competent to lay the appeal upon the table. There are two usages and principles upon which this question will be decided. It is the prac-

tice of the House of Representatives, invariably, where appeals are taken from the decision of the Chair, to entertain the motion to lay the question of appeal upon the table. The practice of the Senate of the United States, however, is different; and several years since—in 1843 or 1844—at least one or two days were expended in debate by the first men of the nation, whether the question of appeal could be laid upon the table, and it was the judgment of that body that the appeal could not be laid upon the table. Since that time and before, however, the practice of the House of Representatives has been different, and inasmuch as the Chair prefers to adhere to the usage of that body contrary to its own inclination, the Chair rules that the motion to lay the appeal upon the table is in order.

Mr. GRAY, of Boston. If I may be allowed the indulgence of the Convention for a few moments, I desire to state that whatever has been the course pursued in congress, it has ever been the ruling of the Chair of this House, that an appeal shall be decided before any other business is transacted. I am sorry to be compelled to dissent from the decision of the Chair, but an experience of twenty years has taught me that in this Commonwealth, at least, the practice is different. If the Chair adheres to its decision, I shall call for the yeas and nays on the motion to lay the appeal on the table.

The PRESIDENT. The Chair does not doubt that the gentleman is correct so far as the usage of this State is concerned. The Chair desires to say, moreover, that confident in the opinion he has given, he would rather that the Convention should decide this matter for itself. And if a motion is made, he will rule upon it as he has stated.

Mr. LORD. I desire to ask, what will be the effect if the appeal is laid upon the table, and whether the decision of the Chair will then be considered as affirmed?

The PRESIDENT. It is for every gentleman to decide for himself in regard to the effect.

Mr. LORD asked for the yeas and nays.

The PRESIDENT. The yeas and nays have been already demanded.

The question was then taken on ordering the yeas and nays, and it was decided in the affirmative.

Mr. STEVENSON, of Boston. Before the yeas and nays are taken, if the gentleman will allow me, I desire to read the second rule. It is as follows:—

"The President shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order till the question on the appeal shall have been decided."

Would it, under this rule, be in order to proceed to any other business until the appeal has been disposed of?

The PRESIDENT. Certainly not. The laying of the appeal upon the table disposes of it.

Mr. BRIGGS, of Pittsfield. It always gives me pleasure to sustain the decision of the Chair. According to the practice of the House of Representatives at Washington, I believe that the last decision is correct, though I think the practice of the Senate of the United States is somewhat different. I recollect several instances where appeals have been laid upon the table in the former body. But, I regret to say that I cannot sustain the decision of the Chair in relation to another point, that is, the taking of the yeas and nays after the result of a division has been announced.

The PRESIDENT. The Chair would say, that if the practice of the House of Representatives is different, he is in error.

Mr. BRIGGS. I would state to the Chair, that in twelve years experience, I have no recollection of a different course being pursued from that to which I have alluded. In the House of Representatives they take questions by standing up and counting, and by tellers. And I have frequently known the call for the yeas and nays, which is a constitutional right, being made, after the House had passed between the tellers, and before the announcement of the result was made, but never after the decision of the tellers has been reported to the Chair. My recollection is that it was always pronounced too late to make a demand for the yeas and nays after such a decision had been announced.

The PRESIDENT. The gentleman from Pittsfield will find, upon examination, that there are frequent cases where, after the vote has been announced, and the result of the division has been placed upon the journal, the yeas and nays have been ordered. The Chair is confident that that is the practice, and upon that it bases its decision. If it is not the practice of the House of Representatives, the Chair is in error. With the leave of the Convention, the Chair will state the principles upon which this decision is made, aside from the practice of the House of Representatives at Washington, to which the Chair has adverted. It is that the yeas and nays are ordered, not only as a method of determining a vote, but for the purpose of a record. One-fifth of the members have a right to order the yeas and nays to be taken upon all questions for the purpose of obtaining a

record. There is no record, and can be none, except the yeas and nays be taken, and this is provided for by a rule of the Convention. The Chair, regarding this question of reconsideration as a question embracing a principle as vital as any other, believes it to be the right of one-fifth part of the Convention to have the record by yeas and nays upon this question, as upon every other where it is demanded. And the mere fact that it may have been determined by a vote of sound, or by the raising of hands, or by the report of monitors, which it is at the option of the Chair or the Convention to require or not, can produce no record. The record is the responses of members to the call of their names, and, unless the Convention direct the call, there can be no full and perfect record.

But, aside from this theory, the Chair stands upon the usage of the House of Representatives. It is, that when a question has been taken by sound, and declared, and a decision again declared upon the count of the Chair, and another count still, ordered by tellers, and such count is taken and announced to the House, one-fifth of the members present, if a quorum be present, still have a right to a verification and a record of the vote by yeas and nays. The rule of the Convention is clear and explicit upon this subject, and is substantially the same as the constitutional provision relating to the House of Representatives of the United States.

This is one of those questions upon which one-fifth of the members present have a right to have the yeas and nays taken in verification of the record. The Chair has no doubt of the correctness of the decision, upon the well established principles of American parliamentary law; and is impressed with the conviction that it is sustained by the usage of the first and highest deliberative assembly in the world.

Mr. WHITNEY of Conway moved the previous question.

The PRESIDENT. The Chair desires to say, that he would prefer to have this question decided by the Convention at the present time.

Mr. WILSON, of Natick. After the statement which has just been made by the Chair, I will withdraw my motion to lay the appeal upon the table, as it is a matter personal to the Chair.

Mr. HALLETT, for Wilbraham. I renew the motion of the gentleman from Natick, to lay this appeal on the table. I wish to make an explanation myself, for I shall be unable to sustain the decision of the Chair. I do not wish to make a personal issue with that gentleman, however, and I think we can all vote to lay the question upon the table. I see no necessity for any controversy of this kind upon a nice point of order, and I therefore renew the motion of the gentleman from Natick, (Mr. Wilson,) for it seems to me to be the only quiet way of disposing of the subject.

Mr. ASPINWALL, of Brookline. I would inquire of the President, if it is not competent for any member after the present appeal is laid upon the table, to appeal from the decision of the Chair?

The PRESIDENT. If this appeal is laid upon the table, it will be held by the Chair to be finally disposed of.

Mr. LORD. Suppose that it is laid upon the table by a vote of this body, can any gentleman move to take it up again?

The PRESIDENT. Certainly.

Mr. LORD. I would then inquire if a matter which is laid upon the table is permanently decided, and until it is decided, can we go on with any other business under this rule, to which I desire to call the attention of the President? It is the second rule.

Mr. BUTLER, of Lowell. I rise to a point of order.

The PRESIDENT. The gentleman from Salem is addressing the Chair.

Mr. BUTLER. His remarks are in the nature of debate; and I submit that this is not a debatable question.

Mr. LORD. I desire merely to make an inquiry of the Chair, in regard to the disposition of this subject. The second rule requires that:—

"The President shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order, subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order until the question on the appeal shall have been decided."

Although the practice under the rule may be different, yet if I can move to take a matter from the table when it has been ordered to lie there——

Mr. BATES, of Plymouth. I should like to know what question the gentleman from Salem is discussing? I believe there is no question before the House that is debatable.

The PRESIDENT. The gentleman for Wilbraham, (Mr. Hallett,) has moved that the appeal be laid upon the table; and the gentleman from Salem, (Mr. Lord,) rose to a point of order. The Chair has not yet ruled upon that question of order. If the gentleman will indulge him for a moment, the Chair would say, that the motion for the previous question does not cut off the motion to lay upon the table.

Mr. BATES. Is the motion to lay upon the table debatable?

The PRESIDENT. It is not. The gentleman from Salem rose to a point of order.

Mr. LORD. The point which I was suggesting, and to which I only desire to call the attention of the President, was this——

Mr. BATES. I call the gentleman to order. The question is on ordering the appeal to lie upon the table, and that question is not debatable. I therefore insist upon my point of order.

The PRESIDENT. The gentleman from Salem does not state the question of order; the question is on the motion of the gentleman for Wilbraham to lay the appeal upon the table.

Mr. LORD. I propose to state the point of order, if the gentleman will allow me to proceed without interruption; but I cannot do it without using language. My proposition is this: that by a rule of this House, no business is in order after an appeal is taken from this decision of the Chair, until that appeal has been decided; not temporarily disposed of, but decided. Now, the Chair has already ruled, that it is competent to take this subject from the table, after it has been laid there; but I believe there is a parliamentary rule which says, that after a matter has been once disposed of, by laying it upon the table, it is not in order to take it up again, unless there has been an intervention of business in the meantime. So that if this subject is now laid upon the table, we can do no business under the rule, until it has been permanently settled by a decision upon it. Now, I desire to know of the Chair, not by any rule of precedent; not by any rule of the Senate, or House of Representatives of the United States; but, whether under the rules of this body, any business can be done until a question of appeal has been permanently decided, except it be to adjourn. Although a motion to lay upon the table may possibly be in order, yet if we can do nothing but adjourn, after taking that course—because having just laid it down, we cannot take it up again or proceed to other business in the meantime, under the rules of the Convention—shall we make any advance by such a course? I call this fact to the attention of the Chair, not because I have not a great respect for the decision of the Chair, for I have; but because it seems to me, and I think it will strike other gentlemen in the same way, that laying a subject upon the table is not such a final decision of the question, as the rule contemplates.

Mr. MORTON, of Taunton. I rise to a question of order. I desire to call the attention of the Chair to the course of events here. If I understand the state of affairs correctly, the gentleman from Conway (Mr. Whitney) rose and moved the previous question. Afterwards, the gentleman for Wilbraham (Mr. Hallett) moved to lay the question of appeal upon the table. What, therefore, is the question pending?

The PRESIDENT. The immediate question pending, is the motion to lay the appeal upon the table.

Mr. MORTON. Does that supersede the motion for the previous question?

The PRESIDENT. It supersedes it for the present. The Chair will read the rule on this point:—

"When a question is under debate, the President shall receive no motion but to adjourn, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, or to postpone indefinitely; which several motions shall have precedence in the order in which they stand arranged."

Mr. HALLETT, for Wilbraham. If the gentleman from Taunton, (Mr. Morton,) will give way, I desire to say a single word. The previous question, I understand, is superseded by the motion to lay upon the table. I made the motion to lay the appeal upon the table, for the purpose of having an opportunity to express my opinion as to the best mode of getting rid of the question; but as the President has intimated that he is desirous of meeting the question, and as I am ready to meet it and vote upon it honestly and courteously, I will withdraw my motion.

Mr. MORTON, of Taunton. I wish, in a few words, to give the reasons why I shall vote to sustain the Chair in his decision, though they may be somewhat different from those which have been submitted by other gentlemen. I am told, however, that the previous question has been demanded; I do not desire to interfere with that.

Mr. WHITNEY, of Conway. I will withdraw my motion for the previous question, if the gentleman will renew it.

Mr. MORTON. I never made a motion for the previous question in my life, and never intend to do so.

Mr. WHITNEY. I will withdraw it if the gentleman desires.

Mr. MORTON. I wish to state a few of the reasons which will influence me in voting to sustain the decision of the Chair. And, in order to understand this question properly, it is necessary we should look for a moment at the course of events which brought it before us. A motion was made to reconsider the resolves on the subject of elections by plurality; it was put to a vote, and the President announced the decision. A division was then called for—the decision first announced, of course not being final in its character—the votes were counted, and the President

announced the result. Some gentlemen, however, doubted the correctness of that statement, supposing that an error had arisen either in computing the returns of the monitors or in the monitors themselves. The President listened to the statements made, reëxamined his figures, and again announced the result as before. This not being satisfactory to the minds of several individuals, the yeas and nays were then called for, and ordered. These are briefly the facts of the case, as I understand them; and I maintain, Sir, that there never was a final enunciation of the decision. The subject was then under consideration, and if any person in this Convention had demanded another count, I have no doubt that the President would unhesitatingly have ordered it at once, and every one would have acquiesced. If this was the case, therefore, the question was still undecided, and the motion for the yeas and nays was perfectly in order.

Mr. DAVIS, of Plymouth. If the gentleman will allow me to interrupt him a moment. Objection was made by me before the final announcement of the vote; and having commenced making my statement, the Chair desired me to wait until a new count was had, and in the meantime several gentlemen stated to me that they had not voted, because they did not understand what the question was.

Mr. MORTON. I was arguing upon the state of the facts, as I regard them, and the fact now stated by the gentleman from Plymouth, is additional evidence which very much strengthens the view I took.

If, therefore, it was an open, undecided question at the time the division was called for, no gentleman will deny that it was entirely within the rule; and consequently, it was proper and legitimate to demand the yeas and nays. Gentlemen were entitled to have them taken, for the rule provides that on all questions whatever, the yeas and nays shall be ordered if one-fifth shall demand them. I contend, therefore, that it was perfectly correct to order the yeas and nays, and the argument of the gentleman from Boston, (Mr. Stevenson,) ingenious and able as it was, was based upon the mistaken supposition that they were to be taken upon the final passage of the resolves, instead of being intended, as they were, solely to verify the decision of the Chair.

Mr. BUTLER, of Lowell. I wish to say a word in regard to the settlement of this matter in dispute; and in doing so, I shall rely not so much upon precedent, as upon principle and right. As I understood the gentleman from Boston, (Mr. Stevenson,) his argument was, that when a question is once announced as finally determined, there can be no such thing as any farther verification of the same by yeas and nays, but that such determination must forever remain as the decision of the body. That is the ground of his appeal, and of the argument which supported it.

Yeas and nays are simply a method of verification. Now, suppose by accident or design, that a hundred men were crowded into these seats, as was the case once in the French Assembly, who did not belong here, that they stood up and were counted by the monitors, and the final announcement of the vote had been made, when some gentleman should arise in his place and state that he had reason to believe that the vote was incorrect, and in order to verify the vote, and arrive at a more satisfactory conclusion, he should demand the yeas and nays. I want to know, if in such a case as that, when such a demand is made, that the yeas and nays would not be strictly in order. Who is to say that it can be done in one case, and cannot be done in another? Therefore, I am ready to sustain the decision of the Chair upon that point, and shall also vote for the yeas and nays which have been demanded. What are we here for, but to arrive at the deliberate judgment of this assembly; to get at the feelings and wishes of this body? And I submit, if it is not a little like child's play, that we are to be told because the President has announced a vote after a division, that there is no way of getting at the voice of this Convention in a more certain manner; that we are to be tied hand and foot in our deliberations, to be seized by a sort of snap-judgment from which there is no escape. I ask is that according to parliamentary principle and usage?

The question was asked what is the deliberate voice of this Convention upon a certain question? The vote was taken by a division; a gentleman having some doubt in regard to the result which had been announced, desired to have the vote recounted. It was accordingly done. Still it was unsatisfactory, and the yeas and nays were demanded for the purpose of verifying the vote with greater accuracy. The yeas and nays were ordered, and the gentleman from Boston appealed from the decision of the Chair, and for what reason? Because, forsooth, the Convention had voted once upon the question, and it was not in order to verify that vote in another manner. Upon questions of parliamentary usage, I have many times yielded to him; but on the present occasion, I feel constrained to differ with him, and shall therefore record my vote to sustain the decision of the Chair, relying, as I said in the beginning, more upon principle than precedent.

Mr. BRIGGS, of Pittsfield. I desire to say but a single word upon this matter. I much re-

gret that a question of this character has arisen, but since it has come before us, I trust that we shall proceed to act upon and consider it with deliberation and caution. But above all things, in the last hours of the session, I hope we shall not allow ourselves to be excited or irritated by the introduction of such a subject As for myself, I shall be compelled, from my construction of the parliamentary law, to vote against the decision of the Chair. The President has stated the true grounds on which the yeas and nays were ordered—that is, that they were for the purpose of making a record of the vote of every member of this Convention, upon one side or the other, and not for the purpose of verification, as some gentlemen have contended. If the Chair is correct in this statement, the whole foundation of the speech of the gentleman from Lowell is removed, but if not correct, his arguments would certainly be very strong.

But let me inquire what is the mode of verifying a vote? The President rises, puts the question, takes the sound of the voice, and makes a decision accordingly. The vote is doubted, and the rule requires him to take a count. What is the object of that? Simply for the purpose of verifying the vote. The division of the House takes place, and the Chair announces the result. But what is the case here? The result of the first vote was questioned. A division was ordered, and the monitors reported; the Chair announced that one hundred and twelve had voted in the affirmative, and one hundred and eighteen in the negative, so that the motion to reconsider was lost. Some gentleman, not being perfectly satisfied as to the correctness of that vote, requested the President to re-examine his figures; he did so, and announced the same result as before. After some little pause, the gentleman from Plymouth, (Mr. Davis,) arose, and said, Mr. President, there is some mistake about this matter.

Mr. DAVIS, of Plymouth. I arose and addressed the Chair before the announcement of the vote was made.

Mr. BRIGGS. Yes, Sir; he certainly did address the Chair, but what did he say? He said that gentlemen here did not understand the vote, and asked if the yeas and nays could not be taken. But did he call for the yeas and nays then? or ask to have a record made? No, Sir; but in the discussion as to what might be done, the Chair suggested that the gentleman might call for the yeas and nays; and in accordance with that suggestion, the yeas and nays were demanded. These, I believe, are the true facts of the case.

Now, if the gentleman from Plymouth had arisen in his seat before the Chair had made the second, affirmed statement, and had questioned the vote, then, as the gentleman from Taunton (Mr. Morton) says, it would have been the duty of the Chair to have tried the vote again, if demanded, by yeas and nays; but he did neither. The question stands, therefore, as I have stated. As I said before, I am sorry to differ from the Chair as to the congressional practice, but I understand the practice to be this: that any member has a right to demand the yeas and nays at any time before the result is announced by the Chair. I am certainly desirous of acting liberally in this matter, but I am equally desirous of observing the law; for the dignity, decorum, and character of all bodies, depend entirely upon so doing. If I supposed that, by allowing this matter to pass by we should be acting in compliance with parliamentary usage, I would, with pleasure, vote to sustain the decision of the Chair; but under the present aspect of the case, I do not believe we should be acting in accordance with that law, and I shall therefore be compelled to give my vote against him.

Mr. HALE, of Bridgewater. I do not propose to discuss this question, after so much has been said. As to precedent, I merely wish to observe that in all the experience I have had, here or elsewhere, in legislative bodies, I have never known an instance where the demand for the yeas and nays was made and sustained upon a question after the decision of the Chair. I have known them to be called for, but it was always ruled by the Chair to be too late.

I do not understand that, in the present case, the purpose of calling the yeas and nays was to verify the vote, because the gentleman distinctly stated that the object he had in view was to accommodate some gentlemen in his neighborhood, who did not understand the question, and wished to have the vote taken again.

Mr. WATERS, of Millbury. I call for the previous question.

The PRESIDENT. By leave of the Convention, the Chair desires to say to the gentleman from Bridgewater, that there are many precedents in the House of Representatives at Washington.

Mr. HALE. I merely referred to my own experience and observation, and I believe that it is the opinion of every ex-member of congress in this body, that the yeas and nays would not be in order after an announcement of a vote by the Chair had been made.

The question being upon sustaining the decision of the Chair, the yeas and nays were taken, with the following result—yeas, 168; nays, 62.

YEAS.

Abbott, Josiah G.
Adams, Benjamin P.
Adams, Shubael P.
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bates, Moses, Jr.
Bennett, William, Jr.
Bennett, Zephaniah
Bird, Francis W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clarke, Alpheus B.
Cleverly, William
Cole, Sumner
Cooledge, Henry F.
Crittenden, Simeon
Cross, Joseph W.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Robert T.
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Giles, Joel
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hapgood, Lyman W.
Harmon, Phineas
Haskins, William
Hawkes, Stephen E.
Heath, Ezra, 2d
Hewes, James
Hobart, Henry
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Huntington, George H.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knowlton, Charles L.
Knowlton, William H.
Knox, Albert
Langdon, Wilber C.
Lawton, Job G., Jr.
Little, Otis
Loomis, E. Justin
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Parker, Adolphus G.
Parris, Jonathan
Partridge, John
Penniman, John
Perkins, Daniel A.
Phelps, Charles
Phinney, Silvanus B.
Pierce, Henry
Pomroy, Jeremiah
Rawson, Silas
Richards, Luther
Richardson, Samuel H.
Ring, Elkanah, Jr.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville
Stevens, William
Strong, Alfred L.
Sumner, Increase
Swain, Alanson
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Tyler, William
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
White, George
Whitney, James S.
Williams, J. B.
Wilson, Henry
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wood, William H.
Wright, Ezekiel

NAYS.

Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Ayres, Samuel
Bartlett, Russel
Bartlett, Sidney
Bradbury, Ebenezer
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Cogswell, Nathaniel
Conkey, Ithamar
Curtis, Wilber
Dawes, Henry L.
Ely, Homer
Gardner, Henry J.
Gilbert, Wanton C.
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hallett, B. F.
Hapgood, Seth
Heard, Charles
Henry, Samuel
Hillard, George S.
Houghton, Samuel
Hubbard, William J.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
Jenkins, John
Kellogg, Giles C.
Kinsman, Henry W.
Knowlton, J. S. C.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Parker, Samuel D.
Plunkett, William C.
Preston, Jonathan
Rockwell, Julius
Schouler, William
Stevenson, J. Thomas
Stiles, Gideon
Train, C. R.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Weeks, Cyrus
Wilkinson, Ezra
Wilson, Milo
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Allen, Charles
Appleton, William
Atwood, David C.
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Barrett, Marcus
Bates, Eliakim A.
Beach, Erasmus D.
Beal, John
Beebe, James M.
Bell, Luther V.
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Buck, Asahel
Bullen, Amos H.
Carter, Timothy W.
Chandler, Amariah

Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Stillman
Coggin, Jacob
Cole, Lansing J.
Cook, Charles E.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Solomon
Day, Gilman
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Eaton, Lilley
Eustis, William T.
Farwell, A. G.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gardner, Johnson
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves, John W.
Greenleaf, Simon
Hadley, Samuel P.
Hall, Charles B.
Hammond, A. B.
Haskell, George
Hathaway, Elnathan P.
Hayden, Isaac
Hayward, George
Hazewell, C. C.
Hersey, Henry
Hewes, William H.
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Huntington, Charles P.
Hurlbut, Moses C.
Jackson, Samuel
James, William
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Knight, Jefferson
Knight, Joseph
Kuhn, George H.
Ladd, Gardner P.
Ladd, John S.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Lowell, John A.
Marble, William P.
Marcy, Laban
Meader, Reuben
Moore, James M.
Morss, Joseph B.
Newman, Charles
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Orne, Benjamin S.
Paine, Henry
Park, John G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Pool, James M.
Powers, Peter
Prince, F. O.
Putnam, George
Putnam, John A.
Rantoul, Robert
Read, James
Reed, Sampson
Rice, David
Richardson, Daniel
Richardson, Nathan
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sampson, George R.
Sargent, John
Sheldon, Luther
Sherman, Charles
Sleeper, John S.
Smith, Matthew
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Charles G.
Stevens, Joseph L., Jr.
Storrow, Charles S.
Stutson, William
Sumner, Charles
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Turner, David
Tyler, John S.
Underwood, Orison
Viles, Joel
Vinton, George A.
Wales, Bradford L.
Walker, Samuel
Warner, Marshal
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkins, John H.
Williams, Henry
Wilson, Willard
Winn, Jonathan B.
Wood, Nathaniel

Absent, and not voting, 189.

So the decision of the Chair was sustained.

*Elections by Plurality.*

The question recurred on the motion to reconsider the vote on the subject of elections by plurality, upon which the yeas and nays had been ordered.

Mr. FRENCH, of New Bedford, moved to reconsider the vote by which the yeas and nays were ordered.

The motion was agreed to, and the question being taken, the demand for the yeas and nays was not sustained.

The question then being taken on the motion to reconsider the vote on the subject of elections by plurality, it was upon a division—ayes, 138; noes, 49—decided in the affirmative.

So the motion to reconsider, was agreed to.

The question being on the final passage of the resolves on the subject of elections by plurality, they were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution, that a *majority* of all the votes given, shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth: *provided*, that if at any election of either of the above named officers, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor.

2. *Resolved*, That in all elections of Senators and Councillors, the person having the highest number of votes, shall be elected.

3. *Resolved*, That it is expedient so to amend the Constitution, as to provide that a majority of the votes shall be necessary for the election of Representatives to the General Court, until otherwise provided by law.

4. *Resolved*, That in the election of all city and town officers, the same rule shall govern as in case of Representatives to the General Court.

5. *Resolved*, That in the election of all county

and district officers, the person having the highest number of votes shall be elected.

6. *Resolved*, That in all elections where the person having the highest number of votes may be elected, and there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the legislature.

Mr. BIRD, of Walpole. I regret, exceedingly, that I have been the cause of so much uneasiness for the last hour, but as the matter has been finally settled, I desire to submit a few amendments. I move to amend the first resolve by inserting after the word "Commonwealth," in the fourth line, the words "until otherwise provided by law." If this amendment is adopted, I propose to submit the following as a new resolve, to be inserted after the third resolve:—

*Resolved*, That any law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality instead of majority, shall not take effect until one year after its passage.

I also propose to add the following in place of the fourth resolve:—

*Resolved*, That in the election of city and town officers, such rules shall govern as the legislature may prescribe.

It will be seen that the effect of the first amendment which I propose, will be to give to the legislature the power to prescribe that the plurality shall elect the six State officers, instead of the majority. The first resolve now provides that a majority of the votes given shall be necessary to the election of these six State officers. If this amendment is adopted, the legislature will have the power to provide for their election by plurality, but the fourth resolve provides that any such change by the legislature, shall not go into operation until one year after its passage. That is, if the legislature pass a plurality law, an opportunity shall be given to the people to revise the proceedings of that legislature by the election of another body, who shall meet and act upon the matter. If they please to repeal the proceedings of the preceding legislature, they can do so, but if not, the law stands ratified. One great object of this change was to provide something which should look, and be, in reality, more uniform, and which would give something more of symmetry to the system than it at present possesses. As a friend of the majority rule, I feel that I can now retain that rule as applied to the election of the six State officers named in the resolution, until a majority of the people of the Commonwealth, through their representatives, express the desire that it shall be changed; but at the same time, provision is made that such a change shall not take effect until one year afterwards. The object of this is merely to prevent an accidental majority from passing this law, and also to prevent the trickery of politicians, who may desire to subserve their own particular and selfish ends. There is a slight change, also, in the third resolve, to which I have proposed an amendment. As the resolve now stands, representatives are to be chosen by majority until otherwise provided by law. The only change this amendment will make is, that this provision will not go into operation until a year after its passage.

The next proposition is to strike out the fourth resolve. I can see no reason why the election of town officers should be the same as the election of State officers, and I have therefore proposed to substitute a provision that the election of those officers shall take place in such manner as the legislature shall provide. I take it there can be no objection to such a provision, for it is evident that if the people desire to have a different law, they may, through their representatives, obtain one. So far as my acquaintance extends, however, there is no practical difficulty in the election of town officers at the present time, and I think none need be anticipated.

It is unnecessary to argue these points to any great extent, for they are plain, intelligible, and will be easily understood. We of the majority would prefer to retain that rule in the Constitution, without leaving it to the power of the legislature to change it; but, for one, I am entirely willing to submit this matter to the people. If they are desirous of making this change, let them have it; and we shall have an opportunity of changing it, if necessary, at the succeeding legislature. At any rate, by adopting such a provision, we shall be preventing any hasty action on the part of legislative bodies.

I trust that those who have acted with me in this matter, and who are in favor of the majority principle, will look at these propositions carefully before they vote against them. I am aware that it is said we are yielding too much to plurality, but it strikes me that this is not the case, strictly speaking. We yield to the will of the people and to that alone, and if they demand the plurality let them have it. No one will deny that the tendency is towards the adoption of the plurality rule in all elections, and let us have an opportunity to try it first in the election of county and district officers. If we find that it works well in this instance, if we find that the interests of the community will be promoted by the change, we can make the

change, and apply the rule to the election of other and more important officers. But if, on the contrary, we do not like its operation, we can come back to our present system and retain this.

Mr. TRAIN, of Framingham. I move to amend the amendment to the first resolve, by striking out, in the second line, the words "majority of votes given;" also to strike out the amendment of the gentleman from Walpole, (Mr. Bird,) and add after the word "Commonwealth," the words "and the person having the highest number of votes shall be duly declared to be elected."

The PRESIDENT. It is not competent, at this stage of business, to submit such an amendment, as it is in the nature of a substitute to the amendment proposed by the gentleman from Walpole, (Mr. Bird).

Mr. ALVORD, for Montague, called for the previous question.

Mr. GARDNER, of Boston. I trust that the gentleman for Montague does not intend to force us to a vote, by making such a demand.

Mr. ALVORD. I will withdraw my motion, if the Convention will agree to take the vote upon this question at a quarter before eight o'clock.

Mr. GARDNER. I really hope that the gentleman will not force the main question at this time. Here is a new proposition made to us, under the color of an amendment, at the very last stage of this question, a question of grave importance, and of great consequence to every portion of the State, and to every individual in it. We have spent some three or four hours in the discussion of preliminary questions, and now the amendment of the gentleman from Walpole is introduced. Hardly has it been stated to the Convention, when the gentleman for Montague rises and moves the previous question, before one word can be said by any member of the House except the gentleman who introduced these important propositions. I believe that if the previous question is ordered now, it will result in the loss of much valuable time to this Convention. There are gentlemen here, who desire to express their views upon this subject, and I hope that no attempt to gag them, or shut them off in this manner, will be sustained. Gentlemen have met here to discuss the propriety of making provisions which may probably be a part of the organic law of the Commonwealth for the next twenty years; they are sent into this assembly for the sacred, solemn purpose, of providing an organic law for this State, and I submit whether they ought to be debarred from the privilege of considering and debating such questions as may come before them? I do not believe that the majority of this Convention will sanction such a step, and, unless the gentleman withdraws his motion, I shall be compelled to call for the yeas and nays.

The question being taken on ordering the yeas and nays, it was, upon a division—ayes, 44; noes, 94—one-fifth voting in favor, decided in the affirmative.

So the yeas and nays were ordered.

Mr. WILSON, of Natick. I would suggest to my friend for Montague, that it would be better to withdraw his motion, so that we can move to lay the subject upon the table for the present. We have agreed not to adjourn until eight o'clock, and I think we can dispose of the subject this evening.

Mr. LORD, of Salem. I understand that the President of the Convention has ruled, that after the yeas and nays have been ordered upon the previous question, the motion cannot be withdrawn but by universal consent.

The PRESIDENT. The Chair has made no such decision within his recollection.

Mr. LORD. I am aware it was not the decision of the present occupant of the Chair.

Mr. GRAY, of Boston. I believe that such a decision was made by the President *pro tempore*, the other day.

The PRESIDENT. The Chair is of the opinion, that the ordering of the yeas and nays would not preclude the withdrawal of such a motion.

Mr. LORD. I supposed that such was the case, although it was differently ruled by the gentleman who occupied the Chair of the Convention the other day. Now, Sir, I do not want the motion for the previous question withdrawn, for the purpose of laying the orders upon the table, for the purpose of rescinding a vote, for the purpose of having an evening session, to crowd through this resolution which nobody knows anything about. But I think we had better adjourn until to-morrow morning, and, in the meantime, have the amendments printed, so that we may know what they are. We are acting upon a fundamental law, with which, perhaps, a few gentlemen may be fully acquainted; but it is quite important that the Convention should be, also, fully acquainted with it. It is important, too, that a proposition of the character of this, should not be forced through in a single night, because I do not think it would be right to adopt a principle in our Constitution, contrary to the recorded judgment of this Convention. It is for this reason that I am opposed to going on with the consideration of this subject at the present time. We do not, all of us, know what is the amendment

which has been proposed, and some gentlemen have not even heard it read. If we adjourn, there are two desirable objects which would be attained. In the first place, the Secretary will have the amendments printed, so that we can know where we stand upon this matter, and be ready to vote upon it in the morning. In the next place, if we call the yeas and nays now upon ordering the previous question, they cannot be taken before eight o'clock, when the time will have arrived when this Convention must adjourn. Now, Sir, in order to accomplish both of these desirable results, and get rid of the previous question, I move that the Convention do now adjourn.

The question was taken, and, upon a division —ayes, 56; noes, 103—the motion was not agreed to.

Mr. LORD demanded the yeas and nays.

A division being called for on the motion, there were—ayes, 38; noes, 109—one-fifth voting in the affirmative.

So the yeas and nays were ordered.

The question recurred on the motion of the gentleman from Salem, to adjourn, and being taken by yeas and nays, it was decided in the negative—yeas, 56; nays, 144—as follows:—

YEAS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Barrows, Joseph
Bell, Luther V.
Bliss, Gad O.
Bradbury, Ebenezer
Brinley, Francis
Buck, Asahel
Cogswell, Nathaniel
Conkey, Ithamar
Crittenden, Simeon
Crosby, Leander
Crowell, Seth
Davis, Solomon
Dawes, Henry L.
Dennison, Hiram S.
Edwards, Elisha
Eustis, William T.
Gardner, Henry J.
Gilbert, Wanton C.
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Harmon, Phineas
Hillard, George S.
Hinsdale, William
Houghton, Samuel
Hubbard, William J.
Hunt, William
James, William
Jenkins, John
Kellogg, Giles C.
Lincoln, Fred. W., Jr.
Livermore, Isaac
Lord, Otis P.
Marvin, Theophilus R.
Miller, Seth, Jr.
Morey, George
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Parker, Samuel D.
Perkins, Daniel A.
Plunkett, William C.
Sherril, John
Stevenson, J. Thomas
Thompson, Charles
Train, Charles R.
Weeks, Cyrus
White, Benjamin
Wilder, Joel
Wilkinson, Ezra
Wilson, Milo

NAYS.

Adams, Shubael P.
Allen, James B.
Allen, Parsons
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bates, Moses, Jr.
Beal, John
Bennett, William, Jr.
Bird, Francis W.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Bumpus, Cephas C.
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Chester W.
Churchill, J. McKean
Clarke, Alpheus B.
Clark, Ransom
Cole, Sumner
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Earle, John M.
Easland, Peter
Easton, James, 2d
Eaton, Calvin D.
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Freeman, James M.
French, Charles A.
French, Rodney
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hallett, B. F.
Hammond, A. B.
Hapgood, Lyman W.
Hapgood, Seth
Hathaway, Elnathan P.
Heath, Ezra, 2d
Hewes, James
Heywood, Levi
Hobart, Henry
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Huntington, George H.
Hurlburt, Samuel A.
Ide, Abijah M., Jr.
Kendall, Isaac
Kingman, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Little, Otis
Loomis, E. Justin
Marcy, Laban
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nute, Andrew T.
Ober, Joseph E.
Osgood, Charles
Packer, E. Wing
Parris, Jonathan
Partridge, John
Penniman, John
Phelps, Charles
Phinney, Sylvanus B.
Pierce, Henry
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Samuel H.
Rockwood, Joseph M.
Ross, David S.
Royce, James C.
Sanderson, Amasa
Schouler, William
Sikes, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stevens, Charles G.
Stevens, Granville
Strong, Alfred L.
Sumner, Charles
Swain, Alanson
Thayer, Joseph
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Upton, George B.
Wallace, Frederick T.
Wallis, Freeland
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, James S.
Williams, Henry
Wood, Charles C.
Wood, Otis
Wood, William H.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Allen, Joel C.
Alley, John B.
Appleton, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Beach, Erasmus D.
Beebe, James M.
Bennett, Zephaniah
Bigelow, Edward B.
Bigelow, Jacob
Bishop, Henry W.
Blagden, George W.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brewster, Osmyn
Briggs, George N.
Bronson, Asa
Brown, Alpheus R.
Brown, Artemas
Brownell, Frederick
Bullen, Amos H.
Bullock, Rufus
Carter, Timothy W.
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Choate, Rufus
Clark, Henry
Clark, Salah
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cole, Lansing J.
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Cross, Joseph W.
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilbur
Cushman, Henry W.
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Dehon, William
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fiske, Emery
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
French, Samuel
Frothingham, R'd, Jr.
Giles, Joel
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Graves, John W.
Greenleaf, Simon
Hadley, Samuel P.
Hall, Charles B.
Haskell, George
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Hayward, George
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, William H.
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Hurlbut, Moses C.
Hyde, Benjamin D.
Jackson, Samuel
Jacobs, John
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Kuhn, George H.
Ladd, John S.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Littlefield, Tristram
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Meader, Reuben
Mixter, Samuel
Moore, James M.
Morss, Joseph B.
Nayson, Jonathan
Newman, Charles
Nichols, William
Norton, Alfred
Orne, Benjamin S.
Paige, James W.
Paine, Benjamin
Paine, Henry
Park, John G.
Parker, Adolphus G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Pomroy, Jeremiah
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rantoul, Robert
Read, James
Reed, Sampson
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Rogers, John
Sampson, George R.
Sanderson, Chester
Sargent, John
Sheldon, Luther
Sherman, Charles
Sleeper, John S.
Smith, Matthew
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Storrow, Charles S.
Stutson, William
Sumner, Increase
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thayer, Willard, 2d
Thomas, John W.
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Tyler, John S.
Underwood, Orison
Upham, Charles W.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Amasa
Walker, Samuel
Warner, Marshal
Wetmore, Thomas
Wheeler, William F.
White, George
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Wilkins, John H.
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel
Woods, Josiah B.
Wright, Ezekiel

Absent and not voting, 219.

So the Convention refused to adjourn.

The PRESIDENT. The question is upon ordering the main question, and upon that the yeas and nays have been ordered.

Mr. STEVENSON, of Boston. I hope that the Convention will not, at this late stage of the proceedings, order the main question to be put; and my reason is this: Here is a proposition for a radical change in the Constitution, submitted, which has never before been suggested in the Commonwealth; a proposition entirely new, and which has had none of the consideration of the members of this Convention upon this floor, whatever may have been its consideration elsewhere; and, consequently, no opportunity has been allowed to see what will be the effect produced by its adoption, and how it will operate. And yet, it is proposed here, that we shall vote, yea or nay,

upon it, without having any such opportunity afforded.

Now, I ask, for what reason can the previous question be ordered, under such circumstances? It must be for the purpose of saving time; but I ask if it will save any time?

Mr. HALE, of Bridgewater. I rise to a question of order. Is there not a vote of the Convention, to adjourn at eight o'clock?

The PRESIDENT. The Chair has no knowledge of any vote to that effect.

Mr. HALE. I am confirmed in that opinion, from the fact that the Chair proposed, a few moments ago, that the subject be laid upon the table, so that the Convention might be able to adjourn at 8 o'clock, to meet again this evening.

The PRESIDENT. The Chair will read the Secretary's record, respecting the vote to which the gentleman refers. It is as follows:—

"Mr. Griswold moved that the session be extended to eight o'clock this evening, and it was carried."

The Chair accordingly rules, that it is competent for the Convention to sit as long as it may feel disposed. The gentleman from Boston can proceed with his remarks.

Mr. STEVENSON. I was observing, when interrupted, that this is a question of saving time. But I submit, that but one vote can be taken upon these amendments which have been proposed, and a motion may be made to reconsider to-morrow, and the discussion would then probably occupy a much longer time than it would this evening. So that, in fact, there is little or no time to be gained by it. There is another objection, which I have, and that is, that I hold in my hand an amendment, which I desire to propose, and which I believe will receive the approval of many members of the Convention, and as yet no opportunity has been allowed me to propose it.

Now, I appeal to gentlemen, as a matter of justice—is it right, in a body like this, to allow the previous question to be sustained before members have had time or opportunity to reflect upon the matter under consideration? Is it right, that the moment a gentleman has submitted an important proposition, and given us his views in regard to it, another member should at once rise and demand the previous question, thus cutting off all debate and amendments? Is it the way in which we have conducted our business heretofore, or the way in which a body of the dignified character and importance of this, should conduct its labors at any time? Is there any reason why a member of this body should not have an opportunity to ask the mover of a proposition, what is its effect—what is its purpose? If we adopt the previous question now, nobody can propose any amendments. And I do not believe it is intended to recommend to the people of Massachusetts to adopt amendments to the Constitution of the State, which we ourselves have never considered.

I am perfectly aware that it is not in order to state objections to the proposition of the gentleman from Walpole, (Mr. Bird,) but it is in order to state, that, as I heard it read, I saw objections which would, I believe, if laid before this Convention, move the minds of gentlemen to no small degree.

In regard to the other point, whether you shall settle the question to-night or to-morrow morning, that is a matter which must be left with the Convention, who have a right to sit here as long as they choose. But I submit, whether it is proper for such a body as this to ask the people of Massachusetts to alter the fundamental law in a manner which they themselves have not considered. As one of the minority of this Convention, I appeal to the majority, in good faith, whether it is right to drive members to vote upon a proposition of this character; and whether it is not due to every individual here, that before he records his vote upon any subject, he should be allowed to express his views in regard to it.

I hope the previous question will not be sustained. No good motive for it has been or can be shown, but on the contrary there are many palpable objections to such a course being taken at this time.

Mr. BUTLER, of Lowell. I do not wish to say but a single word upon this matter. And first, the gentleman from Boston says there is no good reason why we should sustain the previous question.

*Question of Order.*

Mr. SCHOULER, of Boston. I rise to a point of order. I desire to know, if the Chair has decided that this Convention did not vote to adjourn at eight o'clock?

The PRESIDENT. The Chair has read the vote which was passed. The Convention voted it would hold an evening session until eight o'clock.

Mr. SCHOULER. I want the decision of the Chair itself upon this point.

The PRESIDENT. The Chair will again read the vote, from the journal.

The entry made by the Secretary was accordingly read.

The PRESIDENT. In accordance with this resolve, the Chair does not consider it imperative

upon him to adjourn the Convention at eight o'clock.

Mr. SCHOULER. Then I appeal from the decision of the Chair.

Mr. BUTLER, of Lowell. I rise to a point of order.

The PRESIDENT. The delegate from Boston has appealed from the decision of the Chair.

Mr. BUTLER. Still, I rise to a point of order; and that is, that no gentleman has a right to make inquiries while another is speaking, in order to get a decision of the Chair upon which to base an appeal. I wish farther to know whether the decision of the Chair can take away my right to the floor?

Mr. DANA, for Manchester. I would inquire if the question before the House is upon the previous question or upon the appeal?

The PRESIDENT. The question was upon ordering the main question, pending which the gentleman from Boston (Mr. Schouler) appealed from the decision of the Chair, that it is not imperative for the Chair to adjourn the Convention at eight o'clock.

Mr. SCHOULER, of Boston. I will state the grounds of my appeal. By a vote of the Convention, we decided not to adjourn until seven o'clock. I had the floor, and was about to address the Convention, when the gentleman for Erving (Mr. Griswold) asked me to allow him to make a motion. I complied with his request, and he then moved to extend that rule to eight o'clock. That was the motion made, I care not what it says upon the journal. And I will leave it to the gentleman himself whether in making that motion he intended to raise a quibble, or whether he honestly expected to extend the time to eight o'clock when the Convention should adjourn?

Mr. ALVORD, for Montague. I rise to a point of order. Some little time ago, I understood the gentleman from Bridgewater, (Mr. Hale,) to make an inquiry of the Chair concerning the hour of adjournment. The Chair in reply read the resolution which had been passed, and stated distinctly that in his opinion the Convention could remain in session as long as it saw fit. No appeal was taken from that decision, and I submit—as other business has intervened before the gentleman from Boston rose to a point of order—whether it is not too late for an appeal?

Mr. SCHOULER. I ask the gentleman for Erving to answer my question.

Mr. GRISWOLD, for Erving. As the gentleman has made a personal appeal to me, I am perfectly willing to state what I did and what was my object. My design in making that motion to extend the session, was to give notice to the Convention that there would be an evening session, so that we might close up the business as early as possible, and have it ready for the Committee. That is the reason I made the motion. I had no particular idea one way or the other in regard to the hour of adjournment; but if any existed, it was that the Convention might sit beyond that hour if it chose to do so.

Mr. ALVORD, for Montague. I rise to a point of order. I submit that the appeal is too late.

The PRESIDENT. The Chair understands the question to be this: The person now occupying the Chair was placed in it at a quarter past eight o'clock, when the question was raised by the gentleman from Bridgewater, (Mr. Hale,) in regard to the hour of adjournment. The Chair read the vote of the Convention, and still believes that under that vote he has no right to adjourn this body, but the Convention must say for itself when it will adjourn.

Mr. SCHOULER. I would inquire of the Chair if I am in order? I was called to order by the gentleman for Montague.

The PRESIDENT. The Chair would say that he does not desire to press this matter, or to assume any arbitrary power, but merely desires to act in accordance with what he believes to be right.

Mr. SCHOULER. I know the good nature of the Chair, and his desire to decide properly in this matter, and I am the last man to take an appeal from any decision that the Chair may make, but I do not think that he understands the motion of the gentleman for Erving, (Mr. Griswold,) as I understood it. A motion, however, was made about seven o'clock this evening, by the gentleman now occupying the chair, to lay the orders upon the table, in order that the time of adjournment might be extended until eight o'clock, which is conclusive proof to my mind that the Chair understood the order precisely as I understood it.

Now, Sir, passing from that subject, we are here very near the close of our session. There is no desire on the part of any one to extend the session, and after having thus far gone through with our labors without any serious trouble, I trust that we shall not make the last day's proceedings a scene of excitement or uproar, but allow every subject which is to come before us to be acted upon in perfect harmony. I think that if we adjourn now and have the amendments printed, we can come in to-morrow and vote upon them understandingly, and if necessary, I am willing to vote to meet at eight o'clock.

Mr. BUTLER, of Lowell. I rise to a point of

order. The gentleman is not discussing the appeal, but some other subject.

The PRESIDENT. The Chair rules that the gentleman must confine his remarks to the question of appeal.

Mr. SCHOULER. If the Chair still rules that this Convention ought not, in accordance with its vote, to adjourn at eight o'clock, I hold my appeal to be good.

The PRESIDENT. The Chair will state the question as he understands it, and the gentleman may then make such explanation as may be necessary. The Chair understands the matter to be this: The gentleman for Erving, (Mr. Griswold,) moved that the Orders of the Day lie upon the table. The motion was agreed to, and the gentleman then moved that the session be extended until eight o'clock. That motion was also agreed to, and under that vote the Chair holds that it is not his duty to adjourn this Convention until he is authorized by a specific vote to do so. The delegate from Boston, (Mr. Schouler,) appeals from the decision of the Chair, and the question therefore is, shall the decision of the Chair be sustained?

Mr. LORD, of Salem. I desire to make an inquiry of the Chair. During almost the whole of the session we have had a rule to adjourn at one o'clock, except on Saturdays, when the session was extended by a vote of the Convention until two o'clock. I would ask whether the same form of motion was not used in the present case, as is used in extending the session on that day? if so, I contend that the same rule ought to be applied here.

Mr. ELY, of Westfield. I would inquire if there has been any rule by which the afternoon session has been adjourned at a particular hour?

Mr. LORD. Will the Chair be kind enough to answer my inquiry, whether the vote by which the Convention adjourned at two o'clock in the afternoon, is not precisely in the same form as the order which has been read?

Mr. BATES, of Plymouth. I rise to a point of order; the gentleman is not discussing the question of appeal.

The PRESIDENT. The Chair must rule that the questions propounded by the gentleman from Salem, (Mr. Lord,) are not proper to be answered by the Chair. If the gentleman requests it, the Secretary will be directed to read the vote to which he refers.

Mr. JENKS, of Boston. I would like to say a word upon a question of order. It seems to me that the vote taken by the Convention was this: that the afternoon session shall be extended to eight o'clock. Now what did that vote mean? Did it mean to imply that the session should close at eight o'clock, this evening, or that we should remain in session until eight to-morrow morning? I want to know whether a man who is sentenced to be hung at eight, and is not hung until nine o'clock, is hung lawfully? [Laughter.]

Mr. EARLE, of Worcester. I would inquire of the Chair, whether he has decided the appeal from the decision of the Chair to be in order?

The PRESIDENT. The Chair has decided that the appeal taken from the decision of the Chair by the gentleman from Boston, (Mr. Schouler,) is in order, and the question before the Convention is, shall the decision of the Chair stand as the judgment of this Convention?

Mr. EARLE. I would inquire whether, when a question has been settled and other business has intervened, it is competent to take an appeal from the decision of the Chair?

The PRESIDENT. The Chair is not able to decide that question.

Mr. DAVIS, of Plymouth. I rise to a point of order. I submit that this is not an appeal from the decision of the Chair; but if anything, it is an appeal from the record of the Convention, and there would be just as much propriety in appealing from a resolution which has been passed, as from this vote, for such in fact it is, after it has once been recorded upon the journal.

I think that it is not a matter upon which the Chair is competent to decide, for I consider it to be entirely beyond his jurisdiction, it being an appeal from the record of the Convention, and not from the decision of the Chair. I submit, therefore, that it is not in order.

Mr. LORD, of Salem. In order to avoid this difficulty which has arisen, and prevent the calling of the yeas and nays which have been ordered, and in order also to be good natured all around, believing still, however, that the outside limit should be eight o'clock, I move that this Convention do now adjourn.

Mr. BUTLER, of Lowell. I rise to a question of order. My legislative experience has been confined to the last winter, and then it was decided over and over again, that after a motion to adjourn had been made and decided in the negative, another motion was not in order until some subsequent business had been acted upon. I found fault with this decision, not that there may not be business intervening, but the question with me was, what constitutes such business? Does the President decide that the motion to adjourn is in order, under the present circumstances?

The PRESIDENT. The question before the Convention is on the appeal taken from the decision of the Chair by the gentleman from Bos-

ton, (Mr. Schouler,) and the gentleman from Salem (Mr. Lord) moves that the Convention do now adjourn. The Chair is of opinion that the motion to adjourn is in order.

The question being taken, it was, upon a division—ayes, 68; noes, 118—decided in the negative.

So the motion to adjourn did not prevail.

The question recurred on sustaining the decision of the Chair?

Cries of "Question!" "Question!"

Mr. BRADBURY, of Newton. I have stood here too many times in defence of my parliamentary rights, to be silenced by this call for the question.

I rise merely to state the reasons why I cannot concur in the decision of the Chair, that, under the order adopted to-day, this session does not terminate at eight o'clock. The record which has been read seems to indicate that this session should close at that time.

But, in order to be certain what is demanded by good faith, we must ascertain what is the apparent meaning of the order, and the manifest understanding with which it was adopted; and, in order to this, I desire that the Secretary refer to the language of the standing order terminating our morning sessions at one o'clock, and also to the subsequent order by which, for Saturdays, it was extended to two o'clock. And it seems, if I were occupying your Chair, Mr. President, that the form in which I should find those orders, would guide me in giving a decision in the present instance.

Besides, Sir, under such an order as has been read to us by the Secretary, gentlemen had reasonable ground to expect that this session would terminate at eight o'clock. It looks to me like a breach of faith to absent members, to continue this session beyond eight o'clock, under existing circumstances; and I would as soon cut off a right hand as vote to do so with these impressions.

Mr. BUTLER, of Lowell. I would inform the gentleman that there has been no hour fixed, by any rule whatever, for this Convention to adjourn in the afternoon.

Mr. BRADBURY. The record will show us the nature of the order. We are assembled here to act upon grave questions, and they must soon be settled definitively. We owe to ourselves and the public our most considerate action upon these questions. They should be settled in a full Convention, and if there is dereliction of duty in the absence of members, I submit that it is not at this time the fault of the minority. And I farther submit to this Convention, whether, under existing circumstances, we ought not now to adjourn, to meet to-morrow morning, when we can act upon the subjects before us more deliberately and understandingly than by sitting here to-night?

Mr. HILLARD, of Boston. In my younger days I studied a book called "Paley's Moral Philosophy," and in that is laid down this moral rule, that when A makes a contract with B, A shall execute it according to the way in which he knows B to understand it. Now, I can, with justice, apply that rule to this Convention. The order which has been read, is a contract between the majority and the minority; and I ask whether, in accordance with this moral rule, the majority is not to interpret the contract, or vote in the sense in which they suppose the minority understand it? Now, if the majority vote that the session of the Convention shall be extended to eight o'clock, I should like to know whether there is a man in that majority, possessing natural common sense, who does not believe that it is the understanding of every person in the minority that it is intended to adjourn at eight o'clock, and at no other time? If that be so, I put it to the moral sense of every gentleman here if they are not now bound to stand by that construction.

The PRESIDENT. The motion made by the delegate for Erving, (Mr. Griswold,) was, that the session be extended to eight o'clock this evening. The order of adjournment at one o'clock, reads as follows:—

That the Convention hereafter adjourn at one o'clock in the afternoon, until otherwise ordered.

Mr. WESTON, of Duxbury. I am surprised that gentlemen profess not to have understood the motion of the gentleman for Erving. For their information, I will state that when that motion was made this morning, a gentleman arose and asked the Chair whether, if the motion should prevail, it would make it imperative upon the Convention to adjourn at eight o'clock, and it was the decision of the Chair that it was not imperative upon the Convention, but that it was an open question, to adjourn at eight o'clock, or extend the session beyond that hour.

Mr. LORD, of Salem. If the gentleman will allow me, I desire to make a correction. The inquiry was this: whether we might not adjourn before that time; and the decision of the President was, that the Convention might do so if they desired; but there was no statement that the session could be extended beyond eight o'clock.

Mr. GARDNER, of Boston. I merely desire to say, that when the gentleman for Erving (Mr. Griswold) made that motion, I inquired of you, as President *pro tempore* of the Convention, whether

that motion compelled us to remain in session until eight o'clock, and your reply was, that the Convention might adjourn at any time it saw fit before that hour. I understood nothing, however, in regard to remaining in session after that time.

Mr. WESTON. The decision of the Chair, as I understood it, was that the vote did not make it imperative upon the Convention to adjourn before or after eight o'clock; and it seems very strange to me that gentlemen pretend that we were to be confined to that hour.

Mr. BALL, of Upton. One of the gentlemen who has risen to discuss this question, has laid down a principle of moral philosophy, and I hold that I am bound, and we are all bound, to act in accordance with that principle. Now, this question was talked over by the gentlemen in the eastern gallery, who are known by those who have watched their votes, to be in favor of completing the business of this Convention at the earliest day possible, that we may go to our homes and families; and we decided, without the dissent of a single member, that if the rest of the Convention would do so, we would stay here until eight o'clock to-morrow morning. The proposition was made in the Convention to extend the session until eight o'clock, but it was the understanding of members in the gallery, that we might extend that hour still farther, if the state of the business should demand it; and accordingly, gentlemen were prepared to remain here so long as the session should continue. Now I appeal to gentlemen whether it is not about time to close the labors of this Convention, and allow those who reside at a distance, to return to their families. My business requires that I should be at home now, and there are many others equally as impatient as myself, to be released from the deliberations of this body.

In regard to another matter. I think that the majority of the Convention will do themselves great harm, if they order the main question to be put at this stage of the proceedings. At any rate, I shall be compelled to vote against it. I hope that the Convention will be ready to come together, and discuss the question which has been proposed, in good spirit, as much so as may be necessary, and take the vote upon it, and close up the business at as early a day as possible.

The question was then taken on sustaining the decision of the Chair, and it was decided in the affirmative.

*Elections by Plurality.*

Mr. BUTLER, of Lowell. When interrupted, I was about saying that I could adduce many reasons why the main question should be put now, and among others, was the action of certain gentlemen who had a habit of calling for the yeas and nays upon the most unimportant questions, thus causing a delay in the proceedings of the Convention. Another reason, and a very important one, too, is, that I now see more of the solid men of Boston in this hall, than I have seen since the commencement of the session, and I do not wish to have them detained from their families any longer than possible. I hope that the main question will be ordered, if for no other purpose than to accommodate them. Another reason is, that if we do not pass these resolves to-night, they will lie over until to-morrow, when they would, in all probability, be postponed until the next day, a result which, I trust, the good sense of the majority will not permit to be brought about.

Now I propose—for I have not an overbearing disposition—to allow every gentleman who desires it, to discuss this question fully and fairly. The gentleman from Boston, (Mr. Stevenson,) says that he desires to submit an amendment, and whether he desires to speak or not, we are all here ready to sit and listen to him, though I, myself, happen to be one of those unfortunate men who have had to go without their suppers. [Laughter.] I think, therefore, that it is better that the previous question should be withdrawn, and we will then fix the time at half-past ten for the question to be taken. In the mean time, let every gentleman prepare his amendments, and we will proceed to consider them with all good nature and harmony possible.

Mr. TRAIN, of Framingham. I hope gentlemen understand that this will be a final vote.

Mr. BUTLER. My friend from Framingham says that this will be the final vote; it certainly is the case, but if necessary, a reconsideration may be moved.

Mr. ALVORD, for Montague. I once offered to withdraw my motion for the previous question, provided I could be permitted to substitute a motion to close debate at a particular hour. I am willing to do this at any moment, and place that hour as late in the night as gentlemen may think advisable. I therefore now withdraw my motion for the previous question.

Mr. BUTLER moved that the Orders of the Day be laid upon the table.

The motion was agreed to.

Mr. BUTLER. I now move that the debate upon the question cease at ten o'clock.

Mr. HALE, of Bridgewater. I admire the good nature of the gentleman from Lowell, and I hope that the Convention will follow his example, for by so doing, I believe we shall much

sooner arrive at the object we have in view. I think that we may make a compromise in this matter, provided gentlemen will agree to yield a little to each other. As has been already suggested, I believe that we had better separate to-night, and fix upon some hour in the morning for taking the question. This will give every opportunity to members to express their views upon this important subject; but if it is settled to-night, the result will be by no means satisfactory, and may even tend to extend the session much longer than we now anticipate. I would suggest, therefore, that the most appropriate course for the Convention to pursue, will be to adjourn to-night, after fixing some hour in the morning for debate to cease upon this question; we can then meet and consider this subject in a much more satisfactory manner than would be the case if we continued in session to-night.

Mr. LIVERMORE, of Cambridge. I believe I am as good natured as my friend from Lowell, and just as desirous of closing up this session as he is. But I cannot see that we shall gain anything by continuing our labors to-night. I therefore move to amend the motion of the gentleman, by substituting ten o'clock to-morrow morning, in place of the words half-past ten this evening.

Mr. SCHOULER, of Boston. If this question is to be decided so good naturedly, I think I may be allowed to say a word or two. [A laugh.] I think that this is a perfectly fair proposition, and it would be doing no more than justice to the minority of the Convention, to give them the opportunity which this proposition would afford, of offering their amendments, and expressing their views in regard to the question. It is true, a little bad blood has been stirred up, but it has now entirely subsided, and we are prepared to act harmoniously and deliberately.

I hope that the gentleman from Lowell, (Mr. Butler,) will consent to amend his motion, in the manner suggested, to adjourn to-night, meet to-morrow morning, at an early hour, and, at ten o'clock, take the vote upon the question.

Mr. DANA, for Manchester. I would ask for information, so that there may be no misunderstanding, whether this question can be again reconsidered, the gentleman from Walpole having once moved to reconsider it? Many gentlemen may vote under the impression that it can be reconsidered after it has been finally disposed of.

The PRESIDENT. The Chair would inform the gentleman for Manchester, that the question before the Convention has been reconsidered, and amendments have been submitted by the gentleman from Walpole, (Mr. Bird,) so that it would not be properly in order to entertain a motion to reconsider a second time.

Mr. GARDNER, of Boston. I am afraid that the Convention will think that all the good nature is contained within the sixth division. I was about to rise for the purpose of making the same inquiry which the gentleman for Manchester has made, because I felt a serious apprehension that if the final vote was taken at ten o'clock, this evening, the question having once been reconsidered, a second motion to reconsider could not be entertained.

The PRESIDENT. That is the understanding of the Chair.

Mr. GARDNER. Under these circumstances, and as there are, moreover, but very few members of the Convention who have heard the resolutions and amendments read, or know their meaning, I submit to the good sense and judgment of gentlemen, whether it is not best to postpone farther action until to-morrow morning? In the meantime, the resolves and amendments can be printed; we can read and consider them at our leisure, and submit, if necessary, such additional amendments as may be suggested to our minds.

Mr. ALVORD, for Montague. I wish to call the attention of gentlemen to the fact, that after we have disposed of the matter now before the Convention, we have still to act upon the motion of the gentleman from Taunton, (Mr. Morton,) in reference to the submission of an alternative proposition to the people, on the subject of Representation; and also upon the Report of the Committee on Revision. Members can judge for themselves of the time which will be required to complete this business; and, if this motion is adopted, to adjourn until to-morrow, I think it will be utterly impossible to close our session until sometime next week. I hope, therefore, we shall dispose of this matter to-night, and leave only those two questions I have named to be considered by the Convention.

Mr. EARLE, of Worcester. I have endeavored to get the floor for the purpose of making the suggestions to which we have just listened. It seems to me, that if we intend to get through with our labors this week, we must finish the consideration of this question to-night. There are present, as will be perceived from the last vote which was taken, as many members as there are at any time in the course of the day; there is a disposition to go on with the business, and I hope that there will be no objection to our proceeding and settling this matter to-night. The propositions which have been submitted are simple in their character, and have been discussed over and over again, in all their bearings, and I have no doubt

that they can be decided in a very short time, if members will consent to sit an hour or two longer. Gentlemen are desirous of returning to their homes as soon as possible, and are therefore anxious to do as much as can be done when there is an opportunity afforded, and I have not the slightest doubt, if we settle this matter to-night, that we shall be able to adjourn this week.

Mr. UPTON, of Boston. I cannot say like some gentlemen here, that I am too full for utterance, for I have not yet had my supper. [Laughter.] If there is a disposition, however, on the part of the majority to stop and make a night of it, I am willing and ready to meet them. I would, therefore, propose to the gentleman from Lowell to withdraw his motion, and let us go on with the discussion of the question. We can ascertain by midnight, whether the Convention is ready to take a vote or not; and if not, we can then adjourn, and resume the discussion to-morrow.

Mr. BUTLER, of Lowell. If the course suggested by the gentleman from Boston, can be taken, I will withdraw my motion, with pleasure.

Mr. WALKER, of North Brookfield, moved that the Orders of the Day be taken from the table.

The motion was agreed to.

The question being on agreeing to the amendments to the resolutions,

Mr. GARDNER, of Boston, asked for the reading of the resolutions.

They were accordingly read by the Secretary.

Mr. SCHOULER, of Boston, moved that the resolutions be acted upon separately.

The motion was agreed to.

The question was, therefore, upon adopting the first amendment submitted by the gentleman from Walpole, (Mr. Bird).

Mr. SCHOULER. If it is in order, I move to amend the first resolution, by striking out the words "a majority of all the votes given shall be necessary to the election," and inserting the words "the person having the highest number of votes shall be deemed and taken to be elected," so that if amended, it will read:—

That it is expedient to provide in the Constitution, that the person having the highest number of votes shall be deemed and taken to be elected in the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth.

The question being taken, the amendment was rejected.

The question being on adopting the amendment of the gentleman from Walpole, (Mr. Bird).

Mr. STEVENSON, of Boston. If I understand the amendment of the gentleman from Walpole, he is making no constitutional provision at all, except that the law which may be passed by one legislature upon this subject, shall not take effect until it shall have been ratified by a second legislature, and then it may be made a part of the Constitution. It seems to me, that by the adoption of such a provision, we shall be throwing into that body every year a party quarrel in regard to the election of these six State officers named, although the gentleman has attempted to guard against such an occurrence, by providing, that the plurality law which may be passed by one legislature may stand, unless the people choose a body the next year for the sole purpose of repealing it. Now, if the gentleman is correct in saying, that this is submitting this question to the people, I should like to know what is the objection to our submitting it to the people at once? Surely, if he has so much confidence in them as he professes to have, I see no reason why he should have made it incumbent upon two successive legislatures to establish the law.

While the Committee were considering this subject, a compromise was proposed,—not like the one now introduced by the member from Walpole; but a compromise in which some distinction could be drawn,—to this effect: that an arrangement should be made, providing for the election of some officers by the plurality, and of others by the majority principle; but in both cases, the election of officers of the Commonwealth to be left in the hands of the people. It was proposed that the Convention should recommend, that the plurality should rule in those cases where, after repeated trials, the failure to elect was not provided for, and leave the majority rule to be employed in those cases where election would take place upon the first or second ballots always leaving the power to elect, however, in the hands of the people, instead of transferring it to the legislature.

Now, I can see no advantage which will result from the resolution, if it is amended in the manner proposed by the gentleman; but, on the contrary, it introduces not only into the legislature a party contest as to what the law shall be, but also at the polls, in regard to those who may be sent here to legislate with reference entirely to that one question. And, Sir, I do not believe, that the people of Massachusetts desire to choose representatives for any such purpose. If the amendment suggested by the gentleman from Walpole gives the question to the voters when the law has been passed by the legislature, what earthly reason can there be, why we should not

submit it to them directly? Do not set a political firebrand of this character in the legislature; but let us recommend one or the other of these two rules: The majority or plurality directly to the people; and let them determine which one they will have, when they vote upon the adoption of the Constitution. The gentleman gains nothing by his amendment, and the probability is, that it would only result in producing disorder and danger.

We all know the unpleasant consequences which result in a legislature, where, in a contest for election, members have been voted for with reference, especially, to one particular question. We know that the result has been that that question has been log-rolled more than any other question in the State House. And in regard to forming a constitutional provision, there is but one plain, proper mode of dealing with the people, as to how they shall vote for it; and that is, to propose it to them directly, fairly, and openly, instead of submitting it to them in the indirect way proposed by the gentleman from Walpole. It has been found, that whenever there has been dragged into an election of candidates to the legislature a question upon which the people are divided, it has been made the centre around which log-rolling has been going on. There never was, and never will be, a legislative body where this will not be the case. The amendment of the gentleman proposes nothing, neither a majority nor a plurality rule, but simply leaves it with the legislature to act upon the subject or not, as it may feel disposed.

As I said before, I think that the Convention has but one step to take in the premises; and that is, to submit the plurality principle to the people with the Constitution, and let them vote upon it as they please; if they want it, they will, of course, make it known by their votes; but, I hope that we shall not consent to let the matter be placed in the hands of the legislature, to be there made a matter of party contest and turmoil. For these reasons, I hope that the amendment will not be adopted.

Mr. HILLARD, of Boston. I desire to ask but a single question, and that is, whether the gentleman means to give to all subsequent legislatures the power of repealing the act, and whether it is a matter that may be hereafter acted upon like any other legislative question?

Mr. BIRD, of Walpole. I think that the gentleman from Boston is far more competent to answer that inquiry than I am. The question is simply whether one legislature can repeal an act passed by the preceding legislature.

Mr. UPTON, of Boston. I hope that the amendment of the gentleman, as it now stands, will not be adopted. Gentlemen who have been in the legislature, know as well as I do, that whenever any question of amendment to the Constitution has been proposed, it has been kept as a foot-ball for years, and especially would it be the case were we to allow so important and vital a question as this is, to be placed within their reach. Sir, I hold it to be not only unsound in principle, but it is something to which I might apply much stronger language, to leave the manner of electing the six State officers named in the resolution, to be determined by a body so fluctuating and changeable in its character as the legislature of our Commonwealth. I hope that this Convention will not so settle a fundamental law of Massachusetts.

As I understand this matter, if we adopt the amendment now under discussion, the question will arise in the next legislature, whether the governor and other State officers shall be elected by the plurality, or be elected as they are at the present time. If this question is passed upon affirmatively, it then goes over to the succeeding legislature, when it will come up for consideration again.

If that body do not repeal it, it will then, of course, be an open question, and, from that time henceforward, instead of amendments to the Constitution, you will for years and years have a useless, exciting question, which will cost the Commonwealth thousands upon thousands of dollars to settle; when this Convention has the power to submit it directly to the people, and ascertain from them, at once, what are their wishes in regard to it.

Sir, I submit that it is trifling with the voters of this Commonwealth, to undertake here, in the fundamental law, to leave this question subject to legislative action, year in and year out, undetermined and undecided. I would either put in the Constitution the majority rule or the plurality rule, and decide one way or the other, before I would consent to leave this an open question for future legislation. It would be a shame, disgraceful to the Commonwealth of Massachusetts, and disgraceful to the proceedings of this Convention, were we to leave a proposition of the importance of this, to be kicked about like a foot-ball, from one legislature to the other. So far as the amendment affects the first resolve, I hope that it will not be adopted.

Mr. BUTLER, of Lowell. I would not have spoken upon this question, were I not the chairman of the Committee which reported these resolves which are now proposed to be amended. And, while I am in favor of them, I desire to

state to the Convention the reasons why I hope they will be adopted, and the inducements which weigh upon my mind, trusting that they will have the same effect upon the minds of gentlemen of the Convention. When I made this report, the thing which most troubled me was the charge which has been brought by the minority, that we have left these five or six great State officers to be trucked and dickered about; and they seemed to intimate that it was for some foregone political purpose that it was so. Well, Sir, I admit that it did have a look which would give uncharitable men an opportunity to suppose it was the case; and it occurred to me, that whatever could be done to remove this apprehension, should be done. Now, what do we propose to do? One part of the Convention want the majority rule, the other part want the plurality rule; neither know exactly what rule the people do desire, although we of course, have our opinion. Now, we say we will put the majority system forward as the judgment of the Convention, but in order not to tie up the people, to confine them to this, we will leave it to the legislature to alter it whenever the people may feel disposed to choose a body for that purpose. It may be, and is said, that the question will be used for political purposes; but the next amendment provides that that law shall not take effect until the second legislature has passed upon and agreed to it, and after it has been thus passed upon, there can be no such thing as repealing it, because it has become the settled policy of the Commonwealth. No man can calculate two years ahead as to what will be the political state of the Commonwealth, and, consesequently, it cannot possibly be made to subserve political or party ends.

Mr. SCHOULER, of Boston. The third legislature may repeal it if the people do not like it.

Mr. BUTLER. So it may, provided the people desire it; but it cannot be made a political engine. If the people want the plurality, which fact we shall know from their votes, the legislature will adopt it, and so long as they have that desire, it will be a moral impossibility to repeal it. And it is for the sole purpose of removing any unjust or uncharitable supposition on the part of our minority friends, that this proposition is intended to truck and dicker with, that we have said that we will leave it with the people to fix the matter as they please. If the majority of the Convention, however, choose to establish the plurality or majority principles, so be it; I am perfectly content with that result, and hope that other gentlemen will regard it in the same manner. These are, briefly, my reasons why I shall sustain the resolutions and amendments.

Mr. WHITNEY, of Conway. The gentleman from Lowell has anticipated my remarks, but there has been a single consideration urged here against this amendment, which, I believe, has not been met, and is not, in fact, entitled to much weight, though it deserves a reply. It is this: that if the legislature shall, in future, adopt the plurality rule, it will become a foot-ball in that body, to be constantly kicked about from one session to the other. Now, I think we have some of the past history of Massachusetts to guide us upon this subject. In 1851, we adopted the plurality rule so far as it applied to the election of members of congress. Has that been made a foot-ball? No, Sir; nor do I believe that any legislature for ten years to come will agitate the question. It has been settled, permanently settled, that representatives to congress shall be elected by the plurality rule. It has been said, too, that this will prove a log-rolling machine; but, Sir, I think that is an argument entitled to little weight. The gentlemen from Boston predicted that such would be the case in regard to the election of members of congress, but so far as the rule has been applied there, it has been perfectly successful and satisfactory. It has not been a matter of agitation as yet, and there seems but little probability, at the present time, that it ever will be.

I desire, for a moment, to call the attention of gentlemen to the history of these resolutions. The subject of plurality was introduced in the early part of the session, and was one of the first matters discussed in Convention. When we came to vote upon it, we found that the Convention was about equally divided in regard to the adoption of the plurality rule. Under these circumstances, it was thought best to recommit the subject to a Select Committee; this was done, and the Committee, in due time, reported resolutions to the effect, that in the choice of the following officers, to wit: senators, representatives, and other officers elected by the people, where there was a failure to elect by the first ballot, the plurality rule should be appplied thereafter.

Now, Sir, I like those resolutions as they then stood, and, although they were once adopted, the Convention afterwards reversed their original decision. The proposition is now made to leave so much of the resolution as relates to the governor, lieutenant-governor, and other State officers, to the jurisdiction of the legislature, and, in my opinion, it is a perfectly proper amendment. If gentlemen desire the plurality rule they can reach it there. Does the gentleman from Boston feel that the legislature will not sustain the plurality? If he does, we ought not to put it in our Consti-

tution, where it cannot be reached. If the people favor the plurality rule, we shall be sure to get it through the legislature; if not, the present system will stand as heretofore. But it will not be made a foot-ball, to be bandied and kicked about at the mercy of some political party. There is nothing in the history of the Commonwealth to warrant such an intimation, or lead to any such conclusion, nor will it be the history of the Commonwealth if this amendment should prevail.

Mr. HALE, of Bridgewater. Was not an attempt made in the legislature, two or three years ago, to adopt the plurality?

Mr. WHITNEY. It may have been attempted in one portion of the legislature, but it was not sustained. I do not know that the proposition cost much money, or produced much agitation in the Commonwealth; certainly I never heard that such was the case. And, since gentlemen are so nearly divided in their opinion in regard to the majority and plurality, it has been proposed to refer the matter to the decision of the legislature. But, if it is incorporated in the Constitution, without any power being allowed to the legislature to act upon it, the probability is that we should be necessitated to call another Convention in the course of a few years, to provide against the difficulties which would result from this proposition. The question is one that may be safely left with the legislature, and why will gentlemen, who acknowledge themselves to be in favor of the plurality principle *in toto*, object to such a course being taken? We have already referred to that body so much of the resolution as relates to the choice of representatives by this rule, and I cannot see what reason there is why we should not also refer to them the clause in question. I hope that gentlemen will consider this as a matter of compromise. As for myself, I am entirely in favor of the plurality rule, but I do not think it would be acting wisely to incorporate it in the Constitution before we have heard from the people their opinion in regard to it, and before it is so fully matured as might be desired. Therefore, I think it was wisely proposed to leave the matter with the legislature. In regard to the difficulties which have been suggested as likely to result from such a reference, I merely wish to say, that all such intimations of danger, are founded on no good, substantial reasons, growing out of the past history, or from any prospective view that we may take of the action of the people of the Commonwealth; and consequently no faith or confidence should be placed in them. I hope that the amendment will prevail.

Mr. SCHOULER, of Boston. I move to amend the amendment of the gentleman from Walpole, by adding after the words "until one year after its passage," the words, "and if repealed, the same shall not take effect until one year after its passage."

Mr. BIRD. I accept the amendment.

Mr. GARDNER, of Boston. The gentleman from Conway, (Mr. Whitney,) says he thinks that the objection which was urged in debate, that if this amendment was adopted by the Convention, it would introduce log-rolling and party spirit into the legislature, making this entirely a political question, is entitled to great weight, provided the past history of the Commonwealth sustained that idea; and he has argued that the past history of Massachusetts does not sustain that idea. That is the point at which his remarks were aimed.

Now, Sir, the gentleman from Conway is usually pretty well informed in these matters; but, if he had been acquainted with the facts of this case, he would not have arisen, as he did, for this purpose of alluding to the past history of Massachusetts as bearing upon this subject; and if I could convince him that the past history is what my colleague claimed, I may safely say that his vote would be cast against the proposition. The facts are these: Three years ago, one branch of the legislature, in this building, enacted that electors and members of congress should be chosen by the plurality rule, on the second trial; and the very next year, the other branch passed a law that the electors for president and members of congress should be elected by the majority rule. The question was discussed for several days, and when the vote was taken there were but five or six majority who voted against changing the law. My friend is mistaken when he says it caused no party division; it did. It commanded almost the whole strength and support of a certain party, and had it not been for three or four gentlemen whom I see here to-night, who broke from party and party trammels, it would have been repealed. And one or two gentlemen who now sit near the gentleman from Conway, were of the small band who voted in favor of sustaining the plurality. It came within a mere handful of votes of being reconsidered and repealed. So much for the past history of the Commonwealth in regard to this matter.

Now the gentleman from Walpole, (Mr. Bird,) has introduced a proposition here which varies the action of the Convention hereafter in several very important particulars, though the difficulty which would result from it has been obviated to some extent by his acceptance of the amendment of my colleague, (Mr. Schouler,) so that it now provides that it shall require the action of two

consecutive legislatures to establish the plurality principle, and the action of two consecutive legislatures to repeal it. I should like to know if, under such circumstances, any subsequent legislature could touch the subject thereafter? But why are gentlemen so much afraid of the people, that instead of submitting the question directly to them for their decision, they should provide that two consecutive legislatures should be required to create the law? So that, in fact, the people themselves have nothing to do or say about the matter. Why is this invidious distinction made?

Then again, this Convention has decided that members of the House of Representatives shall be elected by a plurality vote, but the amendment of the gentleman makes it necessary that two legislatures shall also be required to authorize this law. Now, I ask, what are those who are in favor of plurality to gain by such a compromise as that? The original compromise was that members should be elected by the plurality; the second was that it should require one legislature to enact the law, and now the third compromise is that two consecutive legislatures shall be necessary for this purpose.

Sir, I fear that if this Convention does not adjourn, we shall make another compromise still, that a half-a-dozen legislatures shall be required to pass upon this provision before it can become a law of the land. The more talk there is, the more compromises are made.

Now I want to ask where it is, what part of the State it is, which is deprived of its representatives by a non-election? Why, Sir, it is in those towns which are entitled to one representative only; they are the ones upon whom the loss most heavily falls. And I want to ask the delegates from those towns, thus situated, whether they are in favor of piling Ossa upon Pelion? Now we require the sanction of two consecutive legislatures to authorize the small towns to send their representatives here by a plurality vote. If the towns are to be represented, it is to be brought about by the plurality principle, and by this alone. In the early part of the session there was an amendment submitted by a gentleman, proposing a very important alteration; it was introduced as a kind of compromise, and was, in fact, the only tub thrown to the whale, having been passed by a majority of the Convention; but of which I have heard nothing since that time. And now it is proposed to go back and change all that has been done.

This is the advantage of compromises; but I did not expect this Convention to be so favorably disposed towards them. I have heard the voices of many of the prominent members of this body raised in opposition. I have listened to the most eloquent diatribes against this vile compromise; but yet, the only argument which can be adduced in favor of the amendment under discussion is, that it is in the nature of a compromise, and will be more acceptable to the people.

As for myself, I have voted for this question of plurality from the first to the last, in accordance with my sentiments, uniformly and conscientiously, and I am free to say that I should prefer to see the plurality question settled here, rather than have the amendment of the gentleman from Walpole adopted as the sense of this body. Indeed, I may say that I would vastly prefer to see the majority principle reëstablished, rather than to have this hermaphrodite principle which gentlemen are endeavoring to instil into our minds. I desire to stand fairly, honestly, and openly in this matter; to have something tangible upon which to rely, so that when the question is asked me, What has been the action of the Convention? I need not be compelled to search through a half-a-dozen volumes of law books, constitutions, amendments, compromises, and public documents for a reply. I desire to have the matter plain and explicit; so that it can be understood by all the people.

If we do not adjourn on Saturday, I am afraid we shall be undoing, or digging up other plain questions that have already been acted upon and decided by the Convention, and enclosing and enveloping them in such obscurity that we ourselves cannot tell what has been the result of our proceedings here. In conclusion, let me tell my friends that if they expect the people to accept the Constitution we shall present to them, they must make such provision that when the people ask for fish, we shall not give them a serpent; and when they ask for bread, they shall not receive a stone; we must give them something that when it is presented to them, they will not be compelled to stop and taste of it to ascertain its quality.

Mr. WHITNEY, of Conway. I directed my remarks particularly to the question of the election of members of congress, and I believe that I am right, so far as the matter of history is concerned. In the matter of the election of electors for the office of president, it was agitated in the legislature, but not to any extent among the people. The subject of members of congress, however, I am free to say, has had no very considerable agitation anywhere, though it is a matter of considerable importance in times of high political excitement, such as we have about the period of the presidential election.

Mr. SCHOULER. The statement made by

the gentleman from Conway, I believe, is perfectly correct in regard to the action of the House upon the repeal of that part of the plurality law which relates to the election of electors. It passed the Senate and came into the House, and without debate was laid upon the table.

Now, Sir, I presume that the amendment of the gentleman from Walpole is going to pass, and as he has accepted my amendment, which I hope will be adopted also, I have no farther doubt in regard to it.

Mr. BATES, of Plymouth. I will detain the Convention but a moment. I understood the gentleman representing Barre, (Mr. Aldrich,) when he first arose, to state that it had been conceded on all hands, that the people of Massachusetts were unanimously in favor of the plurality principle.

Mr. ALDRICH. The gentleman misunderstood me. I did not say so.

Mr. BATES. Sir, I do not believe that the people are so much in favor of the new principle, as many gentlemen imagine. I shall vote for this thing, because I believe it gives a little more to the majority than it did before. I came here in favor of the majority principle, and shall vote with great reluctance for anything which goes to sustain the plurality. I shall vote for the amendment of the gentleman from Walpole, however, because it gives the power to the legislature to regulate the election of the various officers named, and if the people desire any change, they can obtain it by electing representatives for that purpose.

Mr. MIXTER, of New Braintree. I desire to state my views in regard to the matter under consideration, and as I have not before intruded myself upon the Convention, it being the first time I have addressed the Chair, I trust that I may be indulged for a few moments. Nor would I now break the silence which I have hitherto preserved, did I not believe that the importance of this question demanded that I should, in common with other gentlemen, express my views in regard to it.

Sir, I believe that the people of the town which I represent, as well as of other towns in the vicinity of my home, expected that this Convention would establish the plurality principle throughout, when it came together; and as near as I can judge, I am led to believe that this was the main reason why the people were willing and ready to vote for the calling of this Convention. From the beginning, I have been in favor of the plurality system, and am so still; but I am not in favor of the system which will be established by the adoption of this amendment. I think that we came here for the purpose of making a Constitution that should be acceptable to the people of this Commonwealth; we came here to consult and deliberate as to the best mode of promoting their interests and welfare, and not for the purpose of making a sliding rule, so to speak, which may be turned over and changed by the legislature. While we are here, it is our duty to adopt either the majority or plurality rule; we have been considering the plurality rule, but from the votes which have been taken, I am inclined to believe that we have in a great measure departed from that principle. Certainly, there is no principle at all in the course we have taken, and which gentlemen seem disposed to take this evening in adopting this amendment. If we are to have either of the systems, the majority or plurality, let us have the principle of the thing, for when we curtail it, it is no longer a principle, but simply a rule of action.

Now, we have established the plurality rule for the election of some officers of the government, and the majority rule for the election of some others; and this is the kind of Constitution which we are to send out to our constituents as the result of our labors here. But, this is not all. The attempt is now made to establish a sliding scale, by which we shall allow the legislature of Massachusetts to alter the organic law of the land without the sanction of a direct vote of the people, so that at any time when that body is in session, it may make such amendments to the Constitution as it may be disposed to make.

Again, by the adoption of this amendment, the operation of the plurality law is to be suspended for two years, in order to give time to two legislatures to act upon it, and repeal or accept it, as the circumstances may be. Amendments may therefore be made to the Constitution by two legislatures, without the concurrence of the people. And, mark ye, Sir, these legislatures are to be assembled and elected under a rule established by this Convention, which is admitted by every gentleman who has examined it, to be unjust and unsound. I ask why are we not willing to make such a Constitution as we were sent here to frame? We have provided a basis of representation whereby the legislature is to be elected by less than a majority of the people, and it is to be allowed to assemble here and make laws, and amend our Constitution without the concurrence of the people, and without allowing them to express by their votes, their opinion upon those changes.

Sir, I enter my protest against any provision of this kind; I do not believe that it is required; I do not believe we were sent here to vote upon

any such proposition. I think that its operation will be most injurious to the interests of the people, and that it will introduce difficulties in every election that may hereafter take place. It is our duty to make a Constitution such as our consciences may tell us is right, give it to the people, and let them act upon it just as they may think proper. But, as for this mongrel system, which we are preparing to send out—this unjust basis of representation, this election of officers of government partly by one rule and partly by another, and last of all, this reposing of so much power in the hands of the legislature—I am entirely opposed to it. For these reasons, I shall feel bound to vote against the amendment.

Mr. WALKER, of North Brookfield. The amendment now before us provides, that all the State officers, governor, lieutenant-governor, secretary of state, attorney-general, &c., and also all representatives to the general court, shall be placed on one platform, and elected by a majority of votes; and, also, that the legislature shall have power to provide by law, that they may be elected by a plurality, the law making the change not to take effect until one year after its passage.

That I understand to be the sum and substance of this amendment. This is, in fact, to throw the matter into the hands of the people, and if it be their will that we shall be governed by a plurality instead of a majority, they will say so at the polls and through their representatives; and, as one legislature will intervene, they cannot have the measure sprung upon them contrary to their wishes. They will understand the whole matter, and have ample opportunity to repeal the act should it be obnoxious to them.

Now, I think it marvellously strange, that certain gentlemen here, belonging to the party now in power in this Commonwealth, should manifest such extreme anxiety to defeat the proposition before us. They have been very solicitous, during the whole session, to establish the plurality principle, and now, when it is proposed to give the legislature power to do this very thing, they are out in violent hostility to the measure! They have discovered that it is not safe and proper to trust the people, through their representatives, with this power, and they are in great alarm and trepidation about the matter. Such is the pretence, Sir; but I suppose the real fact is, that they foresee that this provision, as it renders our Constitution consistent, and virtually gives the people the alternative of majority or plurality, will make that instrument so perfect and popular, that they shall not be able to rally even their own party against it.

They did expect to make a great deal of political capital out of the fact, that we had provided that the governor, lieutenant-governor, &c., should be elected in one way, and representatives in another. Now they see, distinctly, that the present amendment is to remove that objection, and destroy all reasonable ground of opposition. This is the explanation of the affair.

I am opposed to the plurality system, but I say if the people want it, let them have it. If they want the majority rule, let them have it. I have no faith in the plurality principle myself, and I agree with the gentleman for Wilbraham, (Mr. Hallett,) who has declared here, that, whenever the government is chosen by any number less than a majority, it ceases to be a democracy. I believe that to be true, hence I am opposed, and have been throughout, as every-body knows, to the plurality system. But I cannot conceive anything inconsistent in my voting for this amendment, because it provides for election by majority in all cases, except in that of senators and county officers; and, in regard to these, for obvious reasons, there cannot be two trials. But, in regard to all the State officers, we establish the majority principle, and, at the same time, generously throw it out to the people, to say whether they prefer the plurality principle. Now, if they want it, let them have it.

Mr. LORD. I wish to ask the gentleman a question. My difficulty is, I have not been able to see this resolution, and I do not know whether I understand it. I understand that for all the higher officers, the majority rule is in force. Do these resolutions propose to submit to the people whether the plurality rule shall be adopted?

Mr. WALKER. I have repeatedly said, the majority principle is to be enforced hereafter, in regard to those officers, until the legislature shall otherwise determine.

Mr. LORD. I beg pardon. I understood it was to be left to the people to pass upon the question.

Mr. WALKER. It is now proposed, by the amendment before us, that it be left to the legislature, whether any change of principle shall be made.

Mr. LORD. Then I understand that the gentleman does not wish to allow the people to decide it, but prefers to put it through the legislature.

Mr. WALKER. That is one of the gentleman's own inferences. I have said that I wish to have the majority principle established by this Convention, but am willing the legislature should have power to change it, in the manner provided in the amendment under consideration. That, I regard the same thing, in effect, as submitting the

question directly to the popular vote, because, as the law making the change cannot go into effect until after one year, another legislature will intervene, and the people will have an opportunity to reverse the action of the previous legislature if they choose to do so. It is, therefore, virtually submitting the question to the people in the best manner possible.

Now, while I am most heartily and unequivocally in favor of the majority principle, I think I am consistent in being in favor of the proposed amendment, because it makes our Constitution uniform in regard to all State officers, and places the power of changing the principle really in the hands of the people, where, of course, it most properly belongs.

Mr. SCHOULER, of Boston. I wish to ask one question, which is, wherein this amendment changes, substantially, the Constitution from what it now is? The legislature has already the power to change the mode of voting in two years.

Mr. DAVIS, of Plymouth. I am extremely reluctant to intrude upon the Convention, and I do not do so to make an argument, but merely to make a statement, inasmuch as I fully agree with the opinion of the gentleman from North Brookfield, (Mr. Walker,) in regard to the question of plurality and majority, but I am willing, for one, to vote for this proposition. It seems to me that those gentlemen who are opposed to the plurality principle, may safely unite upon it, and those who consider the majority system a matter of principle, will be very unwilling to vote for such a principle as one to be incorporated into the organic law.

I merely rose to correct what I supposed might be an erroneous impression in the mind of the gentleman from Walpole, in regard to the amendment of the gentleman from Boston. I understand its effect to be this: that in case the plurality system be adopted by one legislature, and the sanction of the next legislature be withheld, the system not having gone into operation, might be repealed without going into operation at all. I submit that the original amendment, as it now stands, is contradictory. The latter part of it contradicts the former. I suppose the intention was, that it should be repealed after going into operation, although such repeal should not take effect until a year afterwards. As it now reads, if one legislature passes the law, and the next repeals it, it will go into effect notwithstanding. I would, therefore, suggest to the gentleman from Walpole, the propriety of amending his amendment.

The PRESIDENT. Did the gentleman from Plymouth propose any amendment?

Mr. DAVIS, of Plymouth. Yes, Sir. I move to insert after the word "repeal," the words, "and if repealed, such repeal shall not go into operation until one year thereafter."

Mr. TRAIN, of Framingham. I rise to a question of order. I believe this is an amendment in the third degree.

The PRESIDENT. No, Sir. The gentleman from Walpole accepted the amendment of the gentleman from Boston.

Mr. TRAIN. I am sorry, Sir, to detain the Convention for a single moment upon this subject, at this late hour. We have outlived the moles and the bats. They have been with us and have departed, save one solitary specimen of the latter that I see flitting about still, within these walls, wondering, no doubt, at this unusual intrusion upon his domain. I, Sir, came to this Convention a plurality man, that is, an advocate of the plurality system; I have continued to be a plurality man, and shall go away a plurality man. And I do not wish that this Convention should submit any proposition to the people that will require of me an effort to explain. And now I say, if the Convention pass this provision, as submitted by the gentleman from Walpole, they will not only need to go to school to be enabled to understand it, for it will be bad grammer, but it will be necessary that we should go into a discussion in reference to it, in order to persuade the people that it is suitable to be adopted. And there are three sets of principles, or rules, to be advocated. Sir, they cannot be successfully defended. There is no consistency about the matter. And the gentleman from North Brookfield, (Mr. Walker,) and others, have no right to take the ground that they concede something, and express surpise because we are not satisfied with their concession. Sir, who would be satisfied with the concession which allows the people to say next November, whether they will elect their representatives by majority or plurality? There is no concession about it. It is neither fish, flesh, nor good red herring. It is neither the will of the people expressed at the polls, nor the will of the people expressed through the legislature, but a mixture of both. Sir, if I understand what was the situation of this Convention, down to the time when the resolutions on this subject were laid upon the table, as stated in the leading journals of the day, the plurality rule was opposed on the ground that it was wrong in principle, and would be wrong in practice. Sir, I find in the report of a speech of the gentleman from Natick, the following:—

"I oppose the plurality system, because I believe it tends to degrade the politics of the country, and to demoralize the politicians of the country. I think this has been the experience of the coun-

try. It has increased the power of the caucus, the convention, party organizations, great combinations, great interests, and the influence of political leaders, and it has diminished the power of the people, who follow their higher and better sentiments." * * *

"The majority system gives the men of principles, ideas and sentiments, the power to resist the schemes of party leaders, and to make them feel, whenever they enter the caucus and the convention, that they must not outrage the higher sentiments of the best men of their parties. Now, Sir, adopt the plurality rule in all your elections, and you make the caucus and the convention omnipotent; you give full sway to the political chiefs who are controlled by interest and ambition. The whole tendency of the system is to debauch the public sentiment of the country, and to enthrone the omnipotent power of the caucus and the convention. Politicians go into the caucus or the convention prompted by ambition and interest, adopt their own schemes of policy, and when the day of election comes, and the men who are governed by their higher and better sentiments assemble around the ballot-box, they are told that they must take the 'choice of evils,' that they must vote for a candidate they know to be unworthy, whose 'nomination was not fit to be made,' or his and their political opponent will be elected. They know the contest must be then and there decided. They feel the pressure. They pause, hesitate, yield, vote for a candidate they know to be unworthy, and go home degraded in their own eyes, and more ready to yield again to the demands of the caucus and the convention. The whole machinery of caucuses and conventions in this country is one of the worst features of our democratic institutions. The majority system gives the people the power to checkmate their influence; the plurality system lets them have free course and be glorified."

Now, Sir, that gentleman is the exponent of the views of his party. He spoke the faith of the party. He was followed by his party. If it was true in his belief then, it is true to-night. If right then, they are bound to stand by it now. And they have no right to concede to the friends of plurality.

I put it to gentlemen, if they intend to be consistent. I oppose this amendment, because it does not give me plurality. What does it propose? That the legislature every two years may agitate the question. It is nothing but a miserable make weight, and when you go to the people and tell them here is plurality, when in fact it is not so much as you have had for the last ten years. And now gentlemen come in here with a proposition designed to cheat the people into the belief that they are getting the plurality system, when in fact they are getting no such thing at all. And the gentleman from North Brookfield, (Mr Walker,) who, I have no doubt, has read Ten Thousand a Year, and will recollect a certain legal gentleman therein described, and will have no trouble in recognizing him as his own counterpart, tells us that if the people wish for the plurality system, they will express their opinion through the legislature, and he will go home and tell his constituents that he is consistent, beautifully consistent. If that is consistency, I know not what consistency means. No, Sir, it is no consistency. You propose to let the people pass upon what shall be the fundamental law; but you cannot do it in this way. I am willing to let the people say whether they will have plurality or majority; but if you undertake to say that the legislatute shall first pass a law to establish it, and then be at liberty to pass another law repealing it, what sort of a provision are you likely to have? It will have to stand for a year upon the statute book before it will have any vitality. For these reasons, I am opposed to the proposed amendment. I wish to have a Constitution that shall be consistent. I wish the people to have an opportunity to say whether they will have the majority or the plurality rule. And I challenge gentlemen on the other side to defend, on principle, this proposition if they can. The six highest officers in the Commonwealth to be chosen by a majority, and county and town officers by such law as the legislature shall hereafter see fit to direct. If the principle is right in the election of any of your officers, it is right in relation to your senators, your governor, &c. Sir, as we were told by the gentleman from Natick, the difficulty was, the truck and dicker stuck right straight out. It left the highest officers to be bargained for. Now, the same charge applies still. It still leaves these officers to be made a matter of trade. The plurality law is to be a matter of trade. Now I have said substantially, earnestly, courteously, I hope, what are my views in regard to this matter. I trust the proposed amendment will be voted down, and that we shall have a clear and distinct proposition substituted for it, if we are to have any provision on the subject. As an amendment is not now in order, I suppose I must give notice that at some time, when in order, I shall take occasion to move to strike out "majority" and insert "plurality."

Mr. SPOONER, of Warwick. Will the gentleman tell us what he means by a legislature chosen by one-third of the people? If he refers to the House of Representatives, particularly, I will say to him there is no system of representation, town, district, nor any other, which more truly, fairly, thoroughly indicates the popular sentiment of Massachusetts, than the House of Representatives, as at present constituted. Compare it with the Senate. The Senate has been

set forth as representing politically the people of Massachusetts. Who are the people? What is meant by the phrase people? It means those who have a voice in the election of representatives Will the voters of Framingham and Berkshire, have as much voice as those of the large cities in this Commonwealth? No, Sir. Far from it.

Gentlemen tell us that the people are asking for the establishment of the plurality rule. They are asking for no such thing. They do not want it. They only want to adopt the plurality in cases where they are obliged to have it, where they cannot get along without it, and nowhere else. Where the majority principle occasions delay and expense beyond endurance, there the people are willing that the plurality shall be used to avoid the difficulty, and nowhere else. And, this amendment does the very thing that is wanted; it provides for the plurality where the people really want it, and must have it, and saves the majority rule wherever it can be preserved without occasioning inconvenience and delay. The great cause of delay and inconvenience in the legislature heretofore, has been in filling up the Senate, the Governor's Council, &c. Well, we have reduced the number of officers to be chosen by the legislature, from fifty to about five. This number does not furnish a sufficient capital to trade upon; it does not furnish an inducement to create delay and difficulty. I hope the amendment will be adopted.

Mr. HURLBUT, of Sudbury. I do not propose, at this late hour—almost midnight as it is—to detain the Convention with any remarks at length, but I desire, in a few words, to meet this question in all candor. Gentleman are well aware of the position which I have heretofore taken and maintained on this subject. From the beginning, until the present time, at the last hour of the Convention almost, I have been a majority man, and acknowledge none other as my principle. I believe that none other is correct; but I am not prepared to say as the gentleman from Framingham (Mr. Train) said, that I came into this Convention a majority man, that I have continued here a majority man, and that I will go out of it a majority man, and will take *nothing* else. No, Sir; I am prepared to maintain here and elsewhere that my views on this question are correct; but, because I cannot have my desire wholly gratified, I shall not act contrary to the general will of this body. I am ready to meet the gentleman from Framingham half way, and shake hands with him over a compromise. That gentleman knows, as well as myself, that neither of us can have what we should like in a matter of this kind. But, what shall we do? Shall he stand up here and say, I will have nothing but a plurality system, and shall I say I will accept nothing but the majority system? I acknowledge the plurality as a principle; I see how that gentleman can advocate that principle according to his views of it; but yet, I acknowledge the majority as a still better principle. Neither of us can carry out our principles here, however, and the question arises, what shall we do? I thought the other day, when this question was up, that it had been settled finally, completely, so far as the action of the Convention was concerned, and that I then surrendered all that the general good required; though when I did this, I by no means surrendered the principle which I shall ever maintain. It was for the sake of compromise only. And now the subject has again come up for consideration, and an amendment has been offered, purporting to be what gentlemen on the other side of the house call nothing. Again I am called upon to surrender something; I am called upon to let the legislature determine whether we shall have a plurality in time or not; and I am willing to concede even that, if the people of this Commonwealth so ordain. If that be *their* will, I say amen to it, and still I retain my integrity in regard to the great principle that the majority ought to rule. As I said before—without farther extending my remarks—if the gentleman from Framingham will meet me half way in a compromise, I am willing to go with him cordially; but I trust that the gentlemen of this Convention who are so much in favor of the plurality system, will not urge me to surrender yet another step by asking my concurrence in any more amendments that may be proposed.

Mr. LORD, of Salem. I was much amused by the plain spoken, honest speech which came from the gentleman on the other side of the house. I mean the gentleman from Lowell, (Mr. Abbott,) especially when he said that the lion's skin was not one-quarter big enough to cover up what was beneath it. He did not say right out that there was a jackass there. That was not necessary. They have endeavored to patch up this plurality creature, but instead of covering it with the lion's skin, as they intended, their operations have only resulted in exposing a greater part of the jackass beneath.

The gentleman from North Brookfield has accepted this proposition, under the pretence that he was willing to yield his individual preference to the judgment of the people. Why not put into your Constitution this plurality doctrine, and see whether the people will take it or not? When the majority are talking about a matter which

they do not desire to be changed, or when they wish to accomplish some end, do they say that they will give the power to the legislature to do it? No, Sir; they say that the legislature ought not to be trusted; and their whole action has been upon this basis, that the legislature are not fit to be trusted with the rights of the people. You have said this very day, in an amendment which you have adopted, that the legislature shall not be trusted upon the question of calling another Convention, but that the people themselves shall act directly upon it? What new light is that which has broke in upon the gentleman, that he is so willing to allow the people to take charge of this matter of plurality, and act as they feel disposed, by means of the legislature?

Now, Sir, I have no doubt at all that when the enormity of this is exposed, that gentleman will get up and say this certainly is an enormity, but yet it is n't quite so bad as it might have been. And in this manner they will answer every objection that we may make. If we say you have made the House of Representatives as unequal as you could make it, they will reply, what of that, have n't we made the Senate a great deal worse? If these are to be the arguments employed by the advocates of the various propositions which have been made, I must confess they are fully prepared to sustain themselves in any controversy that may arise. But, does it satisfy the people, to say that though we have done wrong, we might have done a great deal worse? Away then, with this sort of argument, and let us begin to rectify before it is too late to do so.

Now, Sir, in regard to this proposition, coming as it does from the gentleman from Walpole, I must confess it is much beyond anything I had ever given him credit for; he has mixed up more elements even than there were at first, and made this more of a mongrel creature than it ever was before. And how is it that gentlemen get up one after the other, and say I go for this proposition because I have been persuaded to trade off such and such proportion of my principle in return for it. I think, says one, that the majority is the correct principle, but my constituents have sent me here to do what is right, but my conscience requires me to stand by the majority of the Convention. Gentlemen bow with great submission to the people, but yet are unwilling to let the people act upon this matter. I say, give the people their right to consider and decide upon this question for themselves; adopt the amendment which my friend from Framingham, (Mr. Train,) proposes, and say that there shall be a plurality unless the people alter it by their legislature. Let the majority and plurality principles, I care not how, be so presented as to give the sovereigns the privilege of choosing between the two for themselves. But, gentlemen are not willing to let the people pass upon the subject; the member from North Brookfield, (Mr. Walker,) dares not let the plurality system go before them; he will not let them decide but through a body that does not represent them. Now, I submit to that gentleman, whether it is not better to let the people act upon this matter for themselves; is he wiser than they, or does he know their wants better than they do themselves? While here, if we act in accordance with our own honest convictions as to what is right, and leave to our constiuents to pass upon our doings, in the end, we shall be better satisfied with ourselves, and with the result which we have assisted to produce.

Mr. STEVENSON, of Boston. I wish to remind gentlemen of the fact that if we pass this resolve, the election will still go to the legislature, unless a majority of the votes be cast for some one or other of the candidates. The amendment proposes to confer upon the legislature the power to alter the Constitution without an appeal to the people. I hope it will not prevail.

Mr. BATES, of Plymouth. I desire simply to call the attention of the gentleman from Framingham, (Mr. Train,) who has been talking about inconsistency, to one fact which appears to have escaped his scrutiny. He has read from the debates of this Convention, as far back as May 27th, to show what the opinions of certain gentlemen were at that date. Now, I wish to refer him to two or three other passages in the proceedings of the Convention on that day, which he did not read. The gentleman from Boston, (Mr. Hillard,) on that day made the following proposition:—

"I propose," said Mr. Hillard, "in case the amendment of the gentleman from Plymouth (Mr. Bates,) should not be adopted, to offer another amendment. I make this statement now, because the amendment which I desire to propose may influence the action of the Convention upon the particular amendment now before them, and therefore with your leave and that of the Committee, I will state that at the proper time, I shall move to amend the resolution by striking out all after the word 'resolved,' and insert the following:—

"That it is expedient so to amend the Constitution as to give to the legislature the power of enacting that in all elections by the people of officers under the Constitution, the person receiving the highest number of votes shall be deemed and declared to be elected."

This, I apprehend, would be giving, in the broadest possible manner, the power to the legis-

lature to decide that in all elections by the people a plurality should determine the result. This doctrine the gentleman from Framingham this evening repudiates, and has had much to say in favor of consistency upon this question. Now, it may not be improper, as the gentleman is so strongly in favor of consistency, to ascertain what his own views were on the occasion referred to.

In the report of the proceedings of this Convention, on this same 27th of May, occurs the following language:—

"Mr. TRAIN, of Framingham. I have thus far taken no part in this debate, nor do I desire to do so now. I simply rise for the purpose of suggesting—which I shall do before I sit down—an amendment to the amendment of the gentleman from Plymouth."

A little farther on in this same speech, and before the gentleman sat down, he thus alludes to his proposed amendment:—

"I propose that they shall leave it to the legislature. Where they cannot go the source, let them go as near to the fountain as they can; if we cannot get the people to pass upon the question, we will leave it in the hands of the legislature; and therefore I propose an amendment to the amendment, to this effect: that all civil officers whose election shall be provided for in the Constitution, may be elected by a majority or plurality, as the legislature shall hereafter determine."

Mr. CHURCHILL, of Milton. I was originally, and on principle, and am still, in favor of the majority rule; but, Sir, I shall vote in favor of the proposition of the gentleman from Walpole; because I think there is a great deal of force in the argument which has been used regarding the expense and inconvenience attending a strict adherence to that rule in all cases. The time and expense that the same elections entail upon the people, are arguments of so much force, that they cannot fail to influence those of us who stand on convenience before matter of principle, in this respect.

I hardly think the gentleman from Salem treated the gentleman from North Brookfield with entire fairness, when he said, in one breath, that he is unwilling, or rather that he dare not, trust this question to the people, and in the next breath taunts him with trusting part of it, at least, to the people, Sir, I contend that this proposition does trust the whole question to the people. It allows the people to adopt the plurality system out and out, in all elections, for it provides expressly that several of the officers, senators and others, shall be chosen upon the plurality principle; and that the people, through their legislature may, if they see fit, ordain that all the other officers may also be chosen by plurality. Thus, the plurality principle is within the reach of the people; the very thing they have been contending for here, is within their reach. And yet we behold the most strenuous opposition from all quarters, because the thing does not come in that peculiar shape which suits their views. Sir, I maintain that, on principle, we should have stood by the majority system here, as we should by the district system; but as it is, to some extent, impracticable, the only way to accomplish any reasonable result is to compromise on some such basis as is proposed here.

Mr. TRAIN. The Convention has had a laugh at my expense, and I enjoyed that laugh; for, in truth, the discovery of inconsistency made by the gentleman from Plymouth, is rather more fanciful than real. When the discussion to which he has referred, was going on, the controversy was—what it should be here to-night—whether we should adopt the majority or the plurality rule. I put it to the Convention then—and if the question were now the same, I should take the same ground—that if the question be submitted to the people, whether they will have plurality or majority, it should not be left to the legislature to determine. Well, now the Convention has determined that they will submit to the people the question whether they will elect one portion of their officers by plurality or by majority, and will leave the question, so far as relates to the remainder, to the legislature. If they will not leave the whole matter to the people, without reservation, then, I say, leave the whole to the legislature. I maintain, that when you yield the principle, you have no right to send one portion to the people for their decision, and reserve another portion.

Mr. BATES, of Plymouth. The question on the occasion which has been referred to, was precisely what the question is here to-night. It was proposed that certain officers should be elected by a majority, until otherwise ordered by the legislature. That was the purport of the amendment proposed by the gentleman from Boston. The gentleman from Framingham got up and said he gave notice that he should move an amendment, which was the very same as the amendment now before the Convention, only it went farther. Now, if it is proposed to leave the election of a part of the officers in the hands of a majority, unless otherwise directed by the legislature, I ask if the principle is not the same as when it was proposed to have all officers so elected, unless otherwise determined by the legislature? I presume it to be precisely the same. There is no escape for the gentleman; he need not squirm, or dodge. He comes in here, and argues against the

amendment before the Convention, as a matter of principle; yet I have shown that in the very same page, or the one preceding that from which he has quoted, he proposes an amendment to leave this matter to be regulated by the legislature, precisely as the amendment of the gentleman from Walpole, now under discussion, proposes to leave it. There is no possible difference in the two cases; and it is useless for the gentleman to attempt an escape from his position, uncomfortable as it is.

Mr. TRAIN. My friend from Plymouth certainly misapprehended my ideas on this subject, or else I cannot read. The closing sentence is this:—

"If gentlemen are afraid to leave this matter to the people, I propose that they shall leave it to the legislature. Where they cannot go to the source, let them go as near to the fountain as they can: if we cannot get the people to pass upon the question, we will leave it in the hands of the legislature, and, therefore, I propose an amendment to the amendment of the gentleman from North Brookfield, to this effect: That all civil officers whose election shall be provided for in the Constitution, may be elected by a majority or by a plurality, as the legislature shall hereafter determine. My idea is, that instead of leaving a portion of the officers to be elected by the legislature, as suggested by the member for North Brookfield, to leave the whole to the legislature."

I said, if we could not have the question of plurality submitted to the people, leave it, as the next best thing, to the legislature. Now, I want to have the Convention remember another thing, that my proposition, as well as that of the gentleman from Boston, was to leave to the legislature an open question. I would prefer to leave it to the people to say whether the elections should be by majority or plurality, and leave to the legislature to alter it if they choose to do it. Where, then, is the inconsistency which the gentleman thinks he has discovered?

Mr. HATHAWAY, of Freetown. I do not rise, at this late hour, for the purpose of making an argument. I do not know but we have fallen upon times similar to those we read of in the Good Book, when, to avoid much importunity, the unjust judge granted the prayer of the widow. There is no question that has been so much agitated here as this question of elections by plurality, since this Convention met. This has been the foremost of all, and it is likely to be the last.

There have been many matters introduced into the debate this evening that seemed to me to have very little to do with the question. Perhaps it is owing to the obtuseness of my perceptions that I do not see the force of the arguments that have been used. It has been said that we have tried the experiment in reference to our representation in congress. I had occasion to say, some time since, that that was a matter entirely beyond our reach; one with which neither we nor the people of Massachusetts had anything to do. It is a matter that is settled by the Constitution of the United States, which directs the legislature to prescribe the time, place, and manner of holding elections for members of congress. All that the people have to do with it, is to comply with the directions given by the legislature, to whom the Constitution of the United States has given this power. We have nothing to do in reference to putting in operation that part of the machinery of our government. That is already settled.

I have had occasion upon this question, heretofore, to say, in reference to a proposition that had been introduced here, that I did not understand quite so clearly as some of those associated with me do, or pretend to do, the precise nature of the proposition. I have asked several times for the reading of such propositions as were offered in the shape of amendments. Unfortunately, sometimes, I have not been accommodated. And I have made up my mind, long ago, that I would not ask for the reading of any proposition in future, but I meant always to vote on the safe side, by voting against any proposition that I did not understand. I would inquire of you, Sir, and I put it to every member of this Convention, how shall we stand, if we adopt the amendment of the gentleman from Walpole? If we look at the proposition as it originally stood, and at his proposition, we shall find a very great discrepancy—a very great inconsistency. The gentleman's proposition is, that until otherwise provided, the legislature may enact a law by which these officers may be elected by plurality; but the law shall not go into operation until one year from the date of its enactment. Then, if you look at the latter part of your constitutional law, where this provision comes in, you will find, that in case the individual voted for does not have a majority of all the votes given, he *shall*—not may—he shall be elected by a majority of the legislature, by *viva voce* vote—I mean as to the whole catalogue of officers there named. Well, now, what sort of patch-work is this? And yet, gentlemen would have us adopt this at midnight, and force it upon the people for their approval.

But I have another objection, and it has been adverted to by those who have spoken upon this question. It is this: You do not propose, under this amendment, to enact an organic law for the people to pass upon, but you propose to enact an organic law that the municipal corporations of

this Commonwealth are to pass upon. And thus a majority of those municipal corporations, so far as their representation is concerned, is to make your Constitution.

Mr. UPTON, of Boston. When this debate commenced, I made a suggestion, in good faith, that the yeas and nays should not be called on ordering the previous question. Now, I am perfectly willing to forego any remarks I might desire to make upon the subject under discussion, if gentlemen will allow the question to be now taken on the first amendment. There must be an end to the debate, at some time or other, and it appears to me we had better close it now.

Mr. BIRD, of Walpole, accepted the amendment of the gentleman from Plymouth, as a modification of his own, and made a farther modification in accordance with the suggestion of the gentleman from Boston.

Mr. PERKINS. It appears to me, that this subject has been pretty well argued, and that it is about time to put it to the people, and let us see how it will work. We have got rather a complicated proposition before us, and the longer it is considered and debated, the more complicated it becomes. I have always thought, until this evening, that I would vote for the amended Constitution. I do not say that I will not now; but let me tell gentlemen, that I doubt very much whether it will be accepted by the people. They will hardly be able to understand what it means.

Mr. HUBBARD, of Boston. I wish to call the attention of the Convention to one single provision of the amendment, which seems to me very objectionable. I allude to the amendment of my colleague in regard to the repealing provision. Power is given to the legislature to adopt the plurality rule. The majority rule is to prevail, until otherwise provided. Now, my impression is, that having exercised the power once, they will have no farther control. I should like to have it withdrawn from the control of the legislature. I therefore move that that part be stricken out.

The motion was not agreed to.

The question being on the amendment proposed by the gentleman from Walpole, as modified,

Mr. WEEKS asked for the yeas and nays.

They were not ordered.

The amendment was, upon a division—ayes, 77; noes, 62—adopted.

The question being on the final passage of the resolves, as amended,

Mr. TRAIN, of Framingham. I give notice that I wish to offer an amendment, but I do not wish to offer it at this late hour. Let it go over until to-morrow morning.

Mr. LORD, of Salem. The mover of the amendment which has just been adopted, has found it necessary to make three or four alterations in his amendment; I therefore suggest, that it had better not be finally acted upon to-night, but that the vote be taken five minutes after the subject shall be taken up to-morrow.

Mr. BUTLER. I think the proposition is a reasonable one, and if no one else makes the motion, I will move that the question on the final passage of the amended resolves, be taken at ten o'clock, on Friday morning.

Mr. DAVIS, of Plymouth. I hope the motion will not prevail. It has been the understanding, that if the debate was allowed to go on, the question might be taken to-night, on the amendment, and on the final passage of the resolves, without the yeas and nays, and many gentlemen have stayed here for that purpose.

Mr. TRAIN. The gentleman seems to think we are under an obligation to vote upon the final passage of these resolves to-night. If so, I for one, am willing to withdraw all opposition.

Mr. WHITNEY, of Conway. I think the proposition that we will take the question at ten o'clock, is a fair one, and for one, I am decidedly in favor of adjourning.

Mr. ELY, of Westfield, moved that the Convention adjourn.

The motion did not prevail.

The question was taken on the final passage of the resolves respectively, excepting the fourth, which had been amended by the adoption of the amendment of the gentleman from Walpole, and they were passed.

Mr. BUTLER renewed his motion, that the question be taken on the final passage of the fourth resolve, as amended, this (Friday) morning at ten o'clock.

The motion was agreed to.

*Reports from a Committee.*

Mr. BATES, of Plymouth, from the Committee on Reporting and Printing, submitted two Reports, which, without being read, were placed upon the Orders of the Day.

Mr. OLIVER, of Lawrence, moved, that the Convention adjourn until half past eight o'clock.

Mr. CHURCHILL suggested that a great proportion of the members would not be apprized of the change of the hour of meeting.

Mr. OLIVER withdrew his motion, and moved that the Convention adjourn.

The motion was agreed to, and the Convention, at half past one o'clock, adjourned until nine o'clock, A. M.

FRIDAY, July 29, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read by the Secretary.

*Leave of Absence.*

The PRESIDENT read a communcation from Mr. Crowell, of Dennis, asking for leave of absence, for the remainder of the session, on account of sickness in his family.

On motion by Mr. DAVIS, of Worcester, leave was granted.

*The Pay Roll.*

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, reported the following order:—

*Ordered*, That the pay accounts of members, for attendance and travel, be made up, including Monday next.

Mr. LIVERMORE. I believe it is generally understood that this Convention can adjourn to-morrow, although it will, of course, be at a late hour, and not in season to enable members residing at a distance to reach their homes before Monday next. It is possible that our session may be protracted so as to include a part of the day on Monday. It is expected, however, that we can adjourn to-morrow night. But it must be perfectly understood, by all the members of this Convention, that some time is necessary for the Committee on the Pay Roll to make up the roll, which will embrace some four hundred and twenty names. I have offered this order at this time, in order to have the pay roll made up to-morrow in season to have a warrant drawn upon the treasury, by the Governor and Council, who, I understand, will be in session to-morrow afternoon, for that purpose. The order includes Monday next, because the members will, undoubtedly—most of them, at least—be detained here over Sunday, and cannot reach home until Monday. It is the usual custom, I believe, in the legislature, to make up the pay roll including Sunday, when they adjourn on Saturday.

The question being on the adoption of the order,

Mr. BATES, of Plymouth, moved to amend the same, by adding thereto the following words:

And no member shall be entitled to pay beyond that time.

The amendment was agreed to, and the order as amended, was adopted.

*Representation.*

The Convention proceeded to the consideration of the Orders of the Day, the first item being the resolve submitted by the gentleman from Taunton, (Mr. Morton,) respecting the mode of submitting the question of representation to the people.

The resolve was read, as follows:—

*Resolved*, That the Committee "appointed to reduce such amendments as have been, or may be, agreed upon, to the form in which it will be proper to submit the same to the people, for ratification," be instructed so to prepare the amendments in relation to the House of Representatives, as to submit to the people the following questions:—

First. Shall the twelfth amendment in the present Constitution be abrogated?

Second. Shall the system of representation by towns, in the form accepted by the Convention, be ratified and adopted as a substitute for the said twelfth amendment?

Or, shall the system of representation by districts, in the form hereto subjoined, be ratified and adopted as a substitute for the twelfth amendment aforesaid?

And if a majority of the legal voters voting thereon, shall be in favor of abrogating the said twelfth amendment, then the one of the two proposed systems of representation which shall receive the greatest number of votes, shall be deemed and taken to be ratified, and shall become a part of the Constitution, in lieu of the twelfth amendment of the present Constitution: *provided*, that if the two proposed systems shall receive an equal number of votes, then the system agreed upon by the Convention, shall be deemed and taken to be ratified, and shall become a part of the Constitution, as above stated.

[Proposed system of Representation by Districts, before referred to.]

The House of Representatives shall consist of two hundred and sixty-one members. Said members shall be apportioned among the several counties, as nearly as possible, according to the number of legal voters in each.

The Senate, at its first session after the ratification of this amendment, and at its first session after each decennial census, shall divide each county into such representative districts, composed of contiguous territory, as they may deem expedient, so that the basis of each representative shall be the same number of legal voters, as nearly as possible, without the division of towns, or the wards of cities: *provided*, that no district shall be so large as to entitle it to more than three representatives; *and provided*, that Nantucket and Dukes County, shall each form one district, and be entitled to at least one representative.

Mr. MORTON, of Taunton. I will ask the attention of the Convention for a very short time. They may be sure I shall not detain them long—I would say less than fifteen minutes, but I be-

lieve it would be safer to go on and say what I have to say, in as few words as possible, without making any promise. It is impossible under the rule—and I do not object to it—to go into any argument upon the general subject; and I will therefore state as briefly as possible, my reasons for presenting the resolve before the Convention, and leave the question to their consideration and decision, without going into any discussion of the principal matter.

I had hoped that this proposition would come up under rather more favorable auspices; and I must confess, that at the present time there is but one unpropitious circumstance, that is, the lateness in the session, and the consequent necessary impatience of members.

I think there is much in the conciliatory tendency and fairness of the proposition to recommend it to the favorable consideration and the adoption of the Convention. I must hope that, even at this late period of the session, gentlemen will give me their attention upon this proposition for ten or fifteen minutes, and I have no doubt they will.

Mr. President: This resolve applies to the most interesting and important subject which has been before the Convention during its session, one which has been most fully discussed, maturely considered, and one upon which, as might be expected, there is very much difference of opinion. The various projects which have been offered, have been thoroughly investigated, and, I presume, every gentleman has made up his mind in relation to them. One project is founded upon town representation, and the other upon representation by districts. The advantages and disadvantages of these two systems have been fully examined; and if they had not, I have no time to discuss them now.

There is a settled difference of opinion in relation to these systems, among the members of the Convention. A portion of them—the majority—are in favor of representation by towns; and a minority—a respectable minority, in numbers at least—are in favor of representation by districts. There is, then, these settled and well-matured opinions, differing as they do, between these two sections of the Convention, which no one can expect to change. But, I hope, however, and believe, there is a disposition upon each side to conciliate and yield a little, for the purpose of bringing their opposing views nearer together. I will not say compromise, for it is a word I dislike; it is sometimes used for proper and honest purposes, and then it is well enough; but it is so often employed to cover up log-rolling intrigue and fraud, that I dislike very much to use it at all. I hope, however, there is a spirit of conciliation among us which will enable us to meet upon some neutral ground, without much yielding of opinion upon either side.

I suppose that every member of the Convention is willing that our constituents should have such a mode of representation as they like. It has been said that we here represent the whole people of the Commonwealth, and that we are, therefore, virtually an assembly of the whole people. I suppose in some sense that may be true, but in others it is not, because if it were, our decision upon the questions before us would be final. I maintain, therefore, that no decision of ours has directly, or by implication, or in any other way, indicated that the people would prefer the town system to the district system.

Now, I propose, by these resolves, to submit the whole question directly to the people. I suppose I may say, for both sides, that the members of the Convention are willing that the people should settle the question. I trust there is no gentleman present who would be disposed to say that we shall arbitrarily determine this question for the people. I suppose they are willing to allow the people to express their wishes upon the subject, and that a majority of the people should decide the question finally. If that is really the desire of the Convention—if they really wish the people to settle the question what system of representation they shall have, I have now presented a scheme by which that wish may be easily and fairly accomplished. Here is now an opportunity by which, so far as it is possible to accomplish it, every member can be exactly satisfied.

I am not tenacious as to the details of a system of representation, if it provides for an equal, righteous representation. But these two systems have been matured as far as we have been able, and I now desire that the people should have the opportunity of judging between the two, and of deciding whether they will have the district system or the town system. If this is not a reasonable proposition—if it is not one that will commend itself to every gentleman, and meet the wishes of every one, I certainly have mistaken their reasonable wishes, and the desires which all have earnestly professed.

It really seems to me, that if gentlemen wish to have the people judge of the relative merits of the two systems, here is an opportunity, which presents no obstacle in the way. The motion may be submitted to the people, and they can take town representation or district representation, just as they choose.

If gentlemen want the Convention to decide the matter finally, and to deprive the people of

the opportunity of expressing their opinions upon the subject, they can do it by voting down this proposition, and by refusing to submit the question to them. If, on the other hand, we are really willing and desirous that our constituents all over the Commonwealth should be allowed to say yes or no to this proposition, why certainly we have now an opportunity to do it. I am at a loss to find any reasonable objection to such a proposition, and therefore I know of no argument to combat upon this subject.

But there are some things which I think specially commend these resolves to our favorable consideration and adoption. It does seem to me a measure of conciliation between the different sections of the Convention. It presents itself in that peculiar form that both the minority and the majority may be gratified. It is an instance, very rarely occurring, in which both sides may be successful. The minority would be satisfied with an opportunity of presenting their scheme to the people, and as the action of the Convention can avail nothing of itself, the majority should be satisfied with the same opportunity of presenting to the people their plan, with the indorsement of the adoption by the Convention. If the majority are willing that the people should express their minds upon the merits of the two systems, I see no possible objection that they can have to passing the resolves.

But there are other considerations which are entitled to much more weight. There is not only a difference of opinion on the merits of the different systems between the different sections of the Convention, but the members seem to differ widely, very widely, as to the relative favor with which each of the different systems is regarded by the people of the Commonwealth. All are, I doubt not, honest and sincere in their convictions; each side seems to be fully persuaded and entirely confident that the people are with them—that the people prefer their system. I have no doubt, as I remarked, that both are equally honest. In my opinion—and it is worth but little—if this question goes to the people, they will prefer the district system for the sake of equality of representation, and of justice and fairness. Other gentlemen are equally confident that the people will prefer town representation. Let the people decide between us. This is all we ask.

There are a portion of the members of this Convention who have very strong objections to town representation; who think it unreasonable, unequal, and unjust. There are individuals in and out of this Convention, whether they are right or wrong in their opinions, who think it so unrighteous they cannot vote for a Constitution containing it. If, therefore, the Constitution is submitted to the people without this proposition—if they are compelled to vote upon only one system of representation—I submit there is great danger that they will vote against the whole, and that all our labor will be lost. There is great danger that the people will prefer the old system to the new, so that gentlemen will not only lose their new system of town representation, but they will also fail in the accomplishment of many other objects which they have in view, and which the people desire. But, on the contrary, if you submit these alternative propositions to the people, you will gain very many votes for the whole work. The friends of each system would suppose that his favorite system would prevail, and therefore would vote for the whole. Many who prefer the district system will vote for the whole, for the purpose of obtaining their object, and many others who prefer the town system, will vote for the whole, for the purpose of obtaining their system of representation. This, therefore, is a very strong argument in favor of submitting this proposition to the people. Deny the right of the people to select for themselves, and you will arouse a spirit which will reject the whole.

There are one or two other facts which I think will recommend this proposition very strongly—and I believe the facts to which I am about to refer are well known to the Convention. I have not made the computation myself, but I am told that it is susceptible of demonstration, that in no one instance has a majority of the people of this Commonwealth, as represented in this Convention, voted in favor of a system of town representation. Those who have examined the subject—and I understand it has been explained in the Convention—have ascertained to a certainty that whenever this matter of town representation has been presented in this Convention and voted upon, in no one instance have one-half, or anything near one-half of the people of the Commonwealth, by their representatives upon this floor, voted for it. If you will compute the number of the constituents, upon the strongest vote given here in favor of town representation, the constituents of the gentlemen who voted for that system will be found to be less, by more than fifty thousand, than one-half the people of the Commonwealth, so that those who did not, by their representatives, vote for it, exceeded those who did, by more than one hundred thousand people.

Now, if you will carry that computation a little farther, and see how many voted, through their representatives, in favor of a district system, you will find in some respects a similar result, though in other respects you will find a wide difference.

Although on no occasion has one-half of the people of the Commonwealth, through their representatives, voted for the district system, yet, if you look at the number of the constituents of the respective parties, you will find that those who voted for the district system represented more than thirty-five thousand people more than those who voted against it.

Now, under these circumstances, ought it not —is it not entirely reasonable—is it not entirely just, that this thing should be submitted to the people to say whether they will decide in favor of those who advocate the town system, or those who advocate the district system? Will the minority, because they have by unequal representation the control of this Convention, exercise the power which accident has given them, not only to dictate to the majority here, but to unjustly and unfairly deprive the people of the power to act on the system of the majority, and compel them to take the system of the minority or nothing? I will not believe until I see it done.

These are some of the reasons, without going into the general merits of the question, why I think we should submit this question to the people. There are some other reasons, however, which might be presented. We have had a protracted session; we have had discussions upon a great variety of subjects upon which there has been a great variety of opinion, and the opinions entertained by gentlemen upon the different sides of the questions that have been before us, have been adhered to pertinaciously; but it has given me great pleasure to notice the amenity of deportment and debate that has been observed, the suavity of manner and courtesy which has prevailed between the members of the Convention. I think we may be proud of the dignity and decorum of our discussions, and the conciliatory disposition of which members who advocated—pertinaciously, perhaps—their different opinions, have uniformly manifested towards each other. I am happy to be able to say, that during the whole of our proceedings there has been that decorum, that gentlemanly deportment, that parliamentary regard for rules and orders, which is a prominent characteristic of a patriotic, intelligent, and high-minded body. I am told, Mr. President—I am glad I did not witness it—that upon one occasion the debate became a little squally. I believe that no voyage, however successful and prosperous, and however happy the passengers and seamen may have been, was ever brought to a close without some clouds. Indeed, a little rough weather is quite necessary to break the monotony, and to give interest to the voyage. I am told that upon a recent occasion, the very last evening, there appeared some threatening clouds which interrupted the composure, and disturbed, to some little extent, the pleasant intercourse which had heretofore prevailed. But I am delighted to know that, like all other squalls, it cleared off, and was succeeded by sunshine and fair weather, the more pleasant for having been interrupted. I hope we shall be able to carry this out till the close of our labors, and that we shall have nothing but the kindest feelings towards each other.

Now, in relation to the resolves before the Convention, let us meet the subject fairly and favorably. Let us submit the question to the people. No one can lose anything by it, unless it be an unjust advantage. We have important reforms which we all wish the people to adopt, some upon which we are pretty generally agreed, and others upon which there is much difference of opinion. But, Sir, let us conciliate upon this great question; let us submit this to the people, and then, I trust, the others will meet a favorable reception. So far as our labors have terminated for good, the people will ratify them, and if in any respect they have been injudicious, the community will sift out the chaff and save the wheat. At any rate, I hope we shall impress upon the minds of the community that we desire to recommend to their favorable consideration, the labors of the Convention.

I will say, in conclusion, that I have very strong fears that unless upon this all-important subject, in which we all feel so deep an interest, which we all consider so vital to the welfare and increasing prosperity of the Commonwealth, I say, that unless we concur in some proposition by which the subject may be thrown open for the consideration and decision of the people, I fear our whole labors may be lost. Let us give them, what I am sure we all desire, a system of representation that shall be in exact conformity with the wishes of the community. [Here the hammer fell.] I have watched the clock, and was just going to add that I was very glad to conclude what I had to say without the interposition of the President's hammer.

Mr. PHELPS, of Monroe. Mr. President: I feel a degree of reluctance to occupy the time of the Convention under the circumstances in which we find ourselves this morning. After the able and eloquent speeches which we have had, and the instruction we have received, it seems almost a work of supererogation for me to attempt to enlighten this Convention; and especially do I feel as though I could expect to receive but little attention, when the pay roll is about to be made up, and there seems to be considerable interest in

that matter. But if I could gain the attention of the Convention for a few moments, I should be very glad to do it, inasmuch as I represent one of the small towns, which has a deep interest in the result of this question relating to the basis of the House of Representatives—as great, perhaps, as any town can have. Nevertheless, I made up my mind, when this discussion commenced, that I would not say a word upon the subject. And I would have adhered to that determination, had it not been for certain ideas advanced by gentlemen on both sides of the question, and especially the idea advanced by the gentleman who represents Wilbraham, when this question was up before. I am sorry that I do not see that gentleman in his seat at the present time. He advanced an idea which has gone to the country, and gone upon the record, giving an impression upon the members from the small towns which is rather unpleasant. That gentleman said that if the members from the small towns did not come to the rescue and help hold up the hands of Moses, he should have to vote for the district system. That statement has gone upon the record, and to the country, and it implies that the small towns have some Moses here to take care of their interests, or else their interests will not be taken care of. I do not believe that gentleman meant what he said; but it is upon record, and it will have the same effect, as it goes out to the country. That gentleman, I suppose, argued the question of town representation as a principle; and I never knew that gentleman forsake what he considered a principle, in regard to any matter whatever.

Sir, it seemed rather hard, after that gentleman had become as it were a sort of acknowledged leader for the small towns, and after he had acknowledged our right in the disputed conflict, and led us on to victory, and the enemy began to scatter in all directions, just because we made one false step, to have the general face about and say: "Soldiers, if you do that again, I will throw up my commission, and go over to the enemy and enlist as a private soldier."

The members from the small towns have occupied but a small part of the time of this Convention, comparatively; and if any apology is wanted, I would say for myself, and I might for many others, that one reason why the members from the small towns have not said more in this Convention, is because speech-making is not their trade or their occupation. They came here with the intention of voting according to the best of their judgment, and only talking when it was actually necessary; to hear all that was said on all sides, and making up their minds so as to vote understandingly, and in a manner to meet the views of their constituents, and accomplish the great object for which this Convention was called.

Another reason why they have not spent the time in speaking upon many questions, is, that there have been plenty of advocates among all parties—gentleman who knew how to talk, who wanted to talk, and did talk. Having plenty of advocates, we thought it not necessary to spend the time in speech-making upon any question whatever. If this is not apology enough, I would say, for one, that after hearing some fifteen or twenty sixty-four pounders, one after another, fired off in regular succession, which had been loaded to the muzzle and rammed down with the iron ramrod of intellect, by men of great experience—after hearing the booming of those mighty cannon, I could not expect to accomplish much by throwing up fire crackers.

After the chairman of the Committee who made this Report had made his candid, able, and telling argument upon this question, and in favor of town representation, we were satisfied to rest the matter there for the time being. But that gentleman was soon assailed and accused of selfishness; figures were made and results announced, showing, as they said, great injustice and inequality. Then, Sir, came forward the untiring, energetic members from Lowell, and they offered to sacrifice, upon the altar of principle, a part of their own power, to preserve town representation. But here it soon became evident that there must be a yielding on both sides. We of the small towns were asked to meet them on some ground of compromise. Yes, Sir, gentlemen from both sides came and urged the members from the small towns to yield something, and give up some portion of their representation, and enter into what was called a compromise. We did so; and over fifty towns consented to yield one-half, so as to be represented every other year. Well, Sir, what thanks did we get for that? The first thing they did was to twit us of surrendering our principle. Yes, Sir, they tell us we abandoned our principle; and, having no principle to stand upon, they very politely ask us to come over to the district system. After each of us had consented to become half a man, or we had yielded up one-half of our representation, we supposed we might ask something from the other side.

The next thing we hear from them is, that it takes three men in Boston to equal one in the country; and they very gravely ask, is it right that one man in the country should equal three in the city? That question has been repeated here time and again.

I would now ask gentlemen who opposed the

calling of this Convention, if they were satisfied with the existing Constitution? That is a question which I wish to put distinctly to gentlemen, whether they were satisfied with the present Constitution? I take it for granted they were satisfied; because, if they were not satisfied, why did they not vote for calling the Convention?

I now come to the question of inequality, and I will answer that question by asking another. Is it right for one man in the city of Boston to be made equal to two hundred and twenty men in the country? I wish gentlemen who opposed calling this Convention, to understand that I consider that they were satisfied with the existing Constitution; and now I ask them if it is right, as that Constitution provided, that one man in Boston should be considered equal to two hundred and twenty in the country? For that is the fact under the present Constitution. My proof is this: Every legal voter in the city of Boston has a right to vote for forty-four representatives, every year casting forty-four votes. Well, Sir, I have the right to cast one vote once in five years for a representative—so that they can vote five times forty-four times while I vote once. Now, I ask if that is right? We have not heard a word of complaint on their part on account of its not being right, though it is beyond all dispute a fact that one man in Boston equals two hundred and twenty in some of the small towns.

After having voted down proposition after proposition on the districting system—and the last time by over one hundred majority—then the gentleman from Taunton proposes to put in his old rejected claim, a claim which we had time and again declared we would not indorse. With all due respect to the gentleman who introduced it, I consider it a great absurdity.

Does the gentleman wish to carry out the principle? Then why does he select this particular and take no other? Why take up a proposition which has been voted down by so large a majority, and say nothing about other matters which were passed with a very close vote? Why not send out the whole judiciary question in all its bearings, and let the people say whether they will have the judges elected or appointed—whether they will have the tenure of their office five, seven, ten, or fifteen years, or for life? How do we know how the people would like to have it? Is he afraid to trust the people? If not, then let them have their choice. Then send an alternate proposition concerning the Council, and let the people say whether they will have them elected or appointed. There is a great difference of opinion as to which is the true principle, the majority or plurality. Why do the friends of plurality, who have talked so long and loud upon the subject, ask leave to send both propositions to the people, so that the *people* can have what they want? Why not say to the people, and done with it, that their delegates cannot agree, unanimously, upon anything; and therefore they, the *dear people*, may look over our discussions and vote upon all the propositions, and those that receive a majority of votes shall become part of the Constitution. Sir, the people sent us here for no such purpose as this. We were sent here to say what alterations were wanted, to discuss the matter, then vote upon it, and whatever the majority voted for, send to the people; and if it suited them they would accept it; if not, they would reject it. Sir, they did not send us here to get up a proposition for districting the State, and send it back to them, saying that we rejected it in Convention by a very large vote, and we thought it a miserable concern; nevertheless, we did not know but the people might take a fancy to it. So we concluded that if you wanted it, you might have it. Mr. President, I for one, cannot think the people will thank us for pelting them with rotten eggs.

Not a word was said about a district system, before the calling of this Convention. No, Sir; but the argument was: see to it, you of the small towns, go for the Convention, that you may not be annihilated; now is your last chance to preserve town representation. That was the argument. Now, where are those gentlemen who threw the documents all over the country, calling upon us to take our last chance and be saved? Sir, I trust that they are here, and ready to tell by their votes what they have told with their mouths. I trust, Sir, that this project of the gentleman from Taunton will be rejected, with as much unanimity as the others have been. It is high time that we said less and did more. We have already remained here longer than it was expected we should. The people are getting impatient, and no one can blame them. If we had discussed nothing but what was reasonably expected we could carry, and had confined ourselves to the question before us, we might have been at home long ago.

But, Sir, not only the fugitive slave law, but a variety of other subjects have been discussed, that had no relation to our duties here. Sir, members from the small towns will remember with gratitude, not only the able and persevering member for Erving, (Mr. Griswold,) but also the untiring exertions of the very able delegate from the city of Lowell, (Mr. Butler,) and the mild, pleasant, and able arguments of the learned member from Worcester, (Mr. Earle,) the musical and

earnest arguments of the gentleman from New Bedford, (Mr. French,) and many others whom it is not necessary to indicate by name.

Mr. WHITNEY, of Boylston. I wish to say a word or two on the proposition which is now submitted. It seems to me to be a very extraordinary proposition. It amounts to this simply: that inasmuch as the large towns and cities have got precisely what they want, they turn round and ask us in the small towns to accept what we do not want. Why cannot gentlemen be satisfied with having their own way in the cities and large towns? If you are districted as you wish to be in the cities and large towns, why do you wish to have the small towns put the rope around their own necks and be drawn up to what they do not want? It seems to me to be a very strange proposition that we of the small towns are to come here and give the large towns what they want, and then put the rope upon our necks and put the other end in their own hands, and let them hang us up to kick. That is the whole of the proposition. I think the cities and towns should be satisfied if they have got all they want. Cannot they permit that Mordecai shall sit at the king's gate if they can have all they desire, until they strangle him upon their gallows? I think we will not consent to it. But if the Convention, contrary to what has been expected all along, should permit this double proposition to go forth to the people, I wish to amend it. I have a proposition or two which I wish to have go to the people. Now, with all due deference to the learning and judgment of the delegate from Taunton, I must be permitted to say that I think the enfranchisement of one-half the people of the Commonwealth, right straight out, is of more consequence than a little inequality which may exist now. And I think the disfranchisement of five hundred, either in the city or country, is of more importance than these side issues where there is a little inequality.

I wish to say one word on the subject of official oaths, whether they shall be abolished. I wish that question to go out among the questions which are to go to the people. And, in the second place, I wish the word "male" to be stricken from the qualification for voting, in the Constitution. I have an inkling that the people are a little ahead of the Constitution in that respect. They are satisfied that no good comes from swearing, and that no evil would come from striking out the word "male." I wish it to go to the people. I will not say that I shall be satisfied with their decision, because I will not be satisfied with anything that is wrong, whether it is done by a million or by one man. I may submit to it. I am not satisfied with the decision that eighteen millions may trample on the rights of three millions. I say it is wicked and cowardly, and we have no right to do it, either as Democrats, as Christians, or as men.

I wish to say one word as to the limitation of the exercise of power by majorities. There is a limitation of majorities. They may not do everything. You may refuse my proposition here, but suppose this Convention say I shall be hung on the Common, have they a right to do it, or have all the men in Massachusetts a right to do it, or have all the men in the Union a right to do it? I say no, and I do not submit to it. Suppose you act on the question of my liberty. Without my being convicted of any crime, have you a right to take away my liberty? I say no. If every man in Massachusetts is engaged in doing it, would that make it right? I say no; and if the whole Union engage in it, I still say no. I feel that I have a right to liberty and life, and there is no principle in democracy or religion, which will authorize you to deprive me of them. If there is a single human being in this great family of nine hundred millions, who is to be deprived of liberty without being convicted of crime, I see no reason why I should not be the man. Therefore, I do not consent to any man's being subjected, without being convicted of crime, either to the penalty of death, or to the penalty of slavery. There is a great disposition in this Convention, it seems to me, to puff up and adore this Union, and to express a great reverence for it. Permit me to say, Mr. President, that I have some misgivings upon this topic. I cannot consent to glorify this Union while it refuses to give freedom to its people. I say it is cowardly for nineteen millions of Anglo Saxons to tread upon three millions of negroes and mixed races. It is un-democratic and un-Christian, and against the Bible; and, although some of our doctors of divinity have caved in, and have carried some of our old friends away with them, by proclaiming that the Bible sanctions slavery, yet, Sir, I choose, so far as I am concerned, to interpret the Bible for myself, and not to have doctors of divinity interpret it for me.

Now some things have been said, in this Convention, with reference to these two propositions which I bring forward here, and considerable liberty has been taken, as I understand; for, although I was not here, I have been informed that some of my friends have been assailed in a manner which was not altogether becoming to the dignity of such a Convention as this. A great many harsh things have been said here, against the rights of women, and against come-outers.

Sir, I have a great reverence for come-outers. Abraham came out from his father's house, and from the religion of his fathers. The Puritans were also come-outers, and came over the seas to enjoy their religious sentiments unmolested. I believe, Sir, that if the truth was known, we are all come-outers, more or less, but some of our friends are older, and have gone to seed a little. They came over so long ago that they have forgotten it, and have gone to seed; and perhaps we shall go to seed too, if we live long enough. It seems to me, that if gentlemen have nothing better to say against this proposition, than to apply the term "Mr." to one of the most womanly women in this Commonwealth, one who is educated and refined, and who has graduated at one of your colleges; and to apply the term "Miss" to such a man as Wendell Phillips, they must be in a desperate situation for want of arguments; and we are driven to institute a comparison between the blackguardism and wit of the fish market and the grog saloons, and that which is introduced here by a distinguished doctor of divinity—we are driven to institute a comparison to see which is the most dignified, and which is to be regarded as the most worthy of men who take part in the proceedings of this body.

Mr. DAVIS, of Fall River. I rise to a question of order. I desire to know what the question is, and if the gentleman from Boylston is speaking to the question?

The PRESIDENT. The gentleman from Boylston will be good enough to state his amendment.

Mr. WHITNEY. I propose to amend the proposition of the gentleman from Taunton, by adding to it the following questions: "Shall official oaths and affirmations be abolished?" and "Shall the term male be stricken from the Constitution?"

The PRESIDENT. The gentleman from Boylston will perceive that both of these propositions relate to a subject different from that which is under consideration, and are therefore excluded by the rule. He can introduce them in a separate resolve, but they are not in order at this time.

Mr. CHAPIN, of Webster, moved the previous question.

Mr. WILSON, of Natick. I hope the gentleman will withdraw that motion, and that we shall proceed to act upon the special assignment. That can be taken up and disposed of in a few minutes.

Mr. CHAPIN. I had concluded from the two last speeches that have been made, that it was about time to take the question. I have no objection to withdrawing the motion, if the gentleman from Natick desires it.

Mr. WILSON. I now move to lay this subject on the table, with a view of taking up the special assignment, being the resolves upon the subject of plurality.

The motion to lay upon the table was agreed to.

*The Plurality Question.*

On motion by Mr. WILSON, the Convention proceeded to consider the first and fourth resolves on the subject of plurality, which were read, as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such law, providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and, in default of any such law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be thus elected.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

The question being on the final passage of the resolves,

Mr. TRAIN moved to amend the first resolve, so that it shall read as follows:—

1. *Resolved*, That it is expedient to provide in the Constitution that a *plurality* of the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such law, providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such law, if at any election of either

of the above named officers, except the Representatives to the General Court, no person shall have a plurality of the votes given, the House of Representatives shall, by a plurality of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from which the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer to be thus elected.

Mr. BIRD, of Walpole. I believe that precisely the same amendment was moved yesterday in the Convention, and it was rejected. The proposition was made, I think, by the gentleman from Boston, Mr. Schouler.

The PRESIDENT. The Chair has inquired of the Secretary, and finds no record of such a motion. The Chair supposes that this precise question has not been presented.

The question being then taken on the motion of Mr. Train, on a division, there were—ayes, 120; noes, 194—so it was not agreed to.

The question then recurring on the final passage of the resolves, Mr. BUTLER asked for the yeas and nays, and they were ordered; and, being taken, resulted—yeas, 184; nays, 159—as follows:—

YEAS.

Abbott, Josiah G.
Adams, Shubael P.
Allen, James B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bliss, Gad O.
Booth, William S.
Boutwell, Geo. S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clark, Henry
Clark, Salah
Clarke, Stillman
Cleverly, William
Crane, George B.
Cressy, Oliver S.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, Isaac
Davis, Robert T.
Day, Gilman
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Edwards, Elisha
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gale, Luther
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Green, Jabez
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hapgood, Lyman W.
Hapgood, Seth
Haskins, William
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d,
Hewes, James
Hewes, William H.
Hobart, Henry
Holder, Nathaniel
Hood, George
Hooper, Foster
Howard, Martin
Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Hyde, Benjamin D.
Jacobs, John
Johnson, John
Kendall, Isaac
Kimball, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, William H.
Knox, Albert
Langdon, Wilber C.
Lawrence, Luther
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Little, Otis
Littlefield, Tristram
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Marvin, Abijah P.
Merritt, Simeon
Moore, James M.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Noah C.
Phelps, Charles
Phinney, Silvanus B.
Pool, James M.
Putnam, John A.
Rantoul, Robert
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Simmons, Perez
Simonds, John W.
Sprague, Melzar
Spooner, Samuel W.
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Strong, Alfred L.
Thayer, Joseph
Thayer, Willard, 2d
Tilton, Abraham
Turner, David P.
Tyler, William
Underwood, Orison
Vinton, George A.
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Wilbur, Joseph
Williams, J. B.
Wilson, Henry
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Allen, Charles
Allen, Joel C.
Allen, Parsons
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Ball, George S.
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Russel
Bartlett, Sidney

Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Bradbury, Ebenezer
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Buck, Asahel
Bullock, Rufus
Bumpus, Cephas C.
Chandler, Amariah
Chapin, Chester W.
Clark, Ransom
Clarke, Alpheus B.
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Davis, Ebenezer
Davis, John
Davis, Solomon
Dawes, Henry L.
Dean, Silas
Dehon, William
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Frothingham, Rich'd, Jr.
Gardner, Henry J.
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Joel
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hallett, B. F.
Hammond, A. B.
Harmon, Phineas
Hathaway, Elnathan P.
Hayward, George
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Heywood, Levi
Hinsdale, William
Hobart, Aaron
Hopkinson, Thomas
Houghton, Samuel
Howland, Abraham H.
Hoyt, Henry K.
Hunt, William
Huntington, Asahel
Hurlburt, Samuel A.
James, William
Jenkins, John
Kellogg, Giles C.
Kinsman, Henry W.
Knight, Joseph
Knowlton, J. S. C.
Kuhn, George, H.
Ladd, Gardner P.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Marvin, Theophilus R.
Miller, Seth, Jr.
Mixter, Samuel
Monroe, James L.
Morey, George
Morss, Joseph B.
Morton, Marcus
Noyes, Daniel
Oliver, Henry K.
Orcutt, Nathan
Park, John G.
Parker, Adolphus G.
Pease, Jeremiah, Jr.
Perkins, Daniel A.
Perkins, Jesse
Pierce, Henry
Plunkett, William C.
Pomroy, Jeremiah
Rawson, Silas
Read, James
Reed, Sampson
Rice, David
Rockwell, Julius
Royce, James C.
Sargent, John
Schouler, William
Sherril, John
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Granville
Sumner, Increase
Taft, Arnold
Thomas, John W.
Thompson, Charles
Tileston, Edmund P.
Tilton, Horatio W.
Train, Charles R.
Turner, David
Upham, Charles W.
Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Wallace, Frederick T.
Wallis, Freeland
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Wilson, Willard
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Alley, John B.
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Beach, Erasmus D.
Bishop, Henry W.
Blagden, George W.
Bliss, Willam C.
Braman, Milton P.
Brown, Alpheus R.
Brown, Hiram C.
Bullen, Amos H.
Carter, Timothy W.
Choate, Rufus
Cogswell, Nathaniel
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
DeWitt, Alexander
Easton, James, 2d
Eaton, Calvin D.
Edwards, Samuel
Ely, Joseph M.
Eustis, William T.
Fitch, Ezekiel W.
Graves, John W.
Greene, William B.
Greenleaf, Simon
Hall, Charles B.
Haskell, George
Hillard, George S.
Hobbs, Edwin
Hubbard, William J.
Ide, Abijah M., Jr.
Jackson, Samuel
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kingman, Joseph
Ladd, John S.
Mason, Charles
Meader, Reuben
Morton, Elbridge G.
Newman, Charles
Norton, Alfred
Paige, James W.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Sampson, George R.
Sheldon, Luther
Sherman, Charles
Stacy, Eben H.
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Sumner, Charles
Swain, Alanson
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Tower, Ephraim
Tyler, John S.
Warner, Marshal
Wilkins, John H.
Wood, William H.

Absent and not voting, 76.

So the resolves were passed.

The whole series is as follows :—

1. *Resolved*, That it is expedient to provide in the Constitution that a *majority* of all the votes given shall be necessary to the election of a Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General of the Commonwealth, until otherwise provided by law; but no such law providing that the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, Attorney-General, and Representatives to the General Court, or either of them, shall be elected by plurality, instead of a majority of votes given in, shall take effect until one year after its passage; and if at any time after the enactment of any such law, and the same shall have taken effect, such law shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in default of any such

law, if at any election of either of the above named officers, except the Representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall, by a majority of *viva voce* votes, elect two out of three persons who had the highest, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall, by *viva voce* vote, elect one who shall be Governor, or other officer thus to be elected.

2. *Resolved*, That in all the elections of Senators and Councillors, the person having the highest number of votes shall be elected.

3. *Resolved*, That it is expedient so to amend the Constitution as to provide that a majority of votes shall be necessary for the election of Representatives to the General Court, until otherwise provided by law.

4. *Resolved*, That in the election of all city or town officers, such rule of election shall govern as the legislature may by law prescribe.

5. *Resolved*, That in the election of all county and district officers, the person having the highest number of votes shall be elected.

6. *Resolved*, That in all elections where the person having the highest number of votes may be elected, and there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the legislature.

*Representation.*

On motion by Mr. MORTON, of Taunton, the Convention resumed the consideration of the resolves submitted by him, respecting the mode of submitting the question of representation to the people.

Mr. WILSON, of Natick. Mr. President: It seems to me that the proposition of the distinguished gentleman from Taunton, (Mr. Morton,) to submit to the people an alternate plan for the basis of the House of Representatives, will have a tendency to distract, divide, and embarrass the friends of the amended Constitution. I may be mistaken, my apprehensions may be groundless. I admit that the plan may be clearly comprehended, fully understood by the people, so that the friends of reform, upon whom we are to rely to carry through the amendments which the Convention has adopted, may not be at cross purposes during the canvass; but it does appear to me, that it will, if adopted, lead to a diversity of sentiments, opinions, and actions among the friends of constitutional reform. Looking at the proposition—as I cannot but look at it in this light—I cannot give my humble support to it. On the contrary, I feel it to be my duty to do all I can do honorably to prevent its adoption by this Convention.

After days—weeks of debate—after listening to a discussion distinguished for its profound ability, the Convention has expressed its deliberate judgment upon the question. The Convention, by a majority of about one hundred, has decided in favor of a mixed system, based upon corporate rights and population. That system, as it now stands in the amended Constitution, is the deliberate judgment of the Convention. It will go out to the people of Massachusetts as the sense of the Convention. Unequal as it is—unequal as any system that preserves town representation must be—it is the product of the deliberations of the Convention, and it will go out to the people with the sanction of men presumed to embody and express the popular will. Yes, Sir, unequal as it is, it will be sustained by the ideas, habits, associations, and prejudices of the people. For more than six generations the people of this old Commonwealth have maintained the system of town representation, under some modifications. Gentlemen who expect the people to relinquish a system endeared to them by the associations of two centuries, undervalue the force of old habits, associations and ideas. There are, it cannot be denied, members of the Convention, representing large constituencies, who do not prefer the plan adopted, who have not supported that plan, and who are in favor of a district system, based upon population or legal voters.

It is well known, Sir, that there are very many members of the Convention who are in favor of a district system, but who hesitate to vote for it, believing that the people are not yet prepared to abandon town representation, and to adopt a district system. These members have voted for town representation, thus swelling the majority for the plan adopted.

There are several members who doubt whether the Convention has decided in accordance with the wishes of the people or not. These members are divided in their action. Some of them have given reluctant votes for the plan adopted; others of them have voted for a district system throughout. These members are united in the wish to take the sense of the people, if it is practicable to do so, without endangering the whole of the constitutional amendments.

Now, Sir, I am willing to incorporate into the Constitution a provision that shall give the people an opportunity to pass upon the question hereafter, whether they will have the State divided into districts for the choice of representatives or not. The friends of town representation—of the system which is now determined upon—have carried here, that system, by an immense majority. If this Convention reflects the popular will—and gentlemen think it does—I am sure the friends of that system cannot object to giving the people an opportunity to vote upon the district system when

that system is perfected and presented to them in detail.

I cannot give my vote for the proposition now pending, introduced by the member from Taunton, (Mr. Morton,) because in my judgment it will tend to complicate affairs, to embarrass and distract the people, and possibly to defeat the chief object of the Convention. I am willing to go for a plan like the one I hold in my hand. I will read the proposition for the information of the Convention—which I shall move when the proper time for doing so shall have arrived—as an amendment to the proposition offered by the delegate from Taunton. It is as follows:—

*Resolved*, That it is expedient so to amend the Constitution as to provide, that the legislature which shall be chosen at the general election in November, 1855, shall be required to divide the State into forty single districts for the choice of Senators, such districts to be of contiguous territory, and as equal in the number of qualified voters contained in each district as may be; and also to divide the State into single or double districts for the choice of not less than two hundred and forty nor more than three hundred and twenty representatives, such districts to be of contiguous territory, and as equal in the number of qualified voters contained in each disirict as may be, with proper provisions for redistricting the State as aforesaid, in the year 1866, and every tenth year thereafter, and with all other provisions necessary for carrying such system of districts into operation; and to submit the same to the people at a general election to be held in the year 1856 for their ratification; and, if the same shall be ratified by the people, it shall become part of this Constitution, in place of the provision herein contained for the apportioning of Senators and Representatives.

Now, Sir, this is not an alternative proposition. It is simply a provision for the future amendment of the Constitution. It is plain, clear, simple—easily comprehended by all. It provides that the legislature, which will be the second legislature chosen under this amended Constitution, in the year 1855, shall, in the session of 1856, district the State into forty single senatorial districts, and into single or double representative districts, making a House of Representatives of not less than two hundred and forty, nor more than three hundred and twenty; and to submit the question to the people, at the November election of 1856. The people will then have tested the system agreed upon by this Convention. It will have been in full operation; they will have had it for two years; its benefits, if benefits it have, they will have enjoyed; and its evils, if evils it have, they will have suffered; and they will be able to say whether they are in favor of the continuation of that system or not. They will, at the same time, have presented to them a district system, based upon legal voters for the Senate and House of Representatives, carried into full detail, so that every one will know into what senatorial or representative district he goes. Then the whole question will be fairly presented to the people; and the issue will be between the system then existing and the district system presented to them in detail, full and complete, with provisions for re-districting the State in 1866, and every tenth year thereafter.

Now, Mr. President, this proposition is simple, plain, and clear—easily comprehended by all men. There is nothing in it calculated to complicate the question at issue, or to embarrass the friends of constitutional reform, in or out of the Convention. The Convention, by a decisive majority, has adopted the system of town representation, modified by population. That system, if sanctioned by the people, will go into operation in 1854. The legislature chosen under that system will, in 1856, district the Commonwealth for senators and representatives, based on legal voters. The friends of town representation can vote for the Constitution with this provision in it. By so doing, they secure the adoption of this system—they secure its benefits to the people. The friends of the district system can vote for the Constitution with this provision in it. By so doing, they secure, three years hence, the privilege, the right, to vote for a district system, which they desire, and which they believe the people of Massachusetts also desire.

Yes, Sir, the friends of both systems, if they have confidence in their systems, and confidence in the people, can vote for the Constitution with both systems embodied in it. If the people want town representation, they will take and keep it. If they want the district system, they will, in 1856, accept it. Adopt the amendment I propose—adopt the Constitution, as amended, next autumn, and then trust the two systems of representation to the people, and abide the popular verdict. This is all any one can desire, who is willing to trust the people to settle the question for themselves.

I may be told, Mr. President, that the adoption of the amendment I propose, expresses distrust of the system agreed upon. I do not think so. It is a fair and liberal proposition. The Convention has expressed its views in language not equivocal. The majority simply say to the minority: "We are for town representation, you are for a district system. We are confident that the people are for town representation; you say they are for the district system. We have secured town representation, but we have confidence in

our system and in the people; we will be fair and liberal. We will vote to submit, three years hence, a detailed district system to the people, and we will cheerfully abide the result."

Sir, there is no distrust, no weakness in this. There is confidence in the plan adopted, confidence in the judgment of the people, and a spirit of liberality and magnanimity in it. The friends of constitutional reform cannot but appreciate the spirit of liberality which this act of the friends of town representation manifests. I appeal to the advocates of town representation to support the amendment I have proposed; and I call upon the friends of the district system to respond to the action of their associates, and to unite in placing this provision into the Constitution. By so doing, they will secure the adoption of the Constitution by the people, and thus incorporate into the fundamental law, the reforms which have received the sanction of the Convention.

But I may be told, Mr. President, that nothing will be gained by the adoption of the plan I propose. Gentlemen who entertain this idea are mistaken, altogether mistaken. We have provided for future amendments of the Constitution, in the following ways: A majority of the Senate, and two-thirds of the House of Representatives, of two successive legislatures, may propose specific amendments to the Constitution, for the ratification of the people. The legislature may submit, at any session, to the people, the question of calling a Convention. The people, in 1873, and every twentieth year thereafter, shall vote upon the question of calling a Convention; the legislature shall submit the question to the people, if one-third of the legal voters voting at the annual election shall require it. These are the modes provided in the amended Constitution for future amendments. No one can reasonably expect that the people will at present vote for another Convention, even should the amended Constitution fail to meet the just expectations of the people. No one can reasonably expect that the legislature, constituted as the House is, will frame a district system, to be submitted to the people. He must be a sanguine man who supposes that two successive legislatures will, by a majority of the Senate and two-thirds of the House of Representatives, frame a district system. The friends of the district system cannot reasonably hope to obtain such a system within a few years, either by a Constitutional Convention or by the action of the legislature, by either of the provisions for future amendments. Now the amendment I propose, makes it the duty of the legislature chosen in 1855, to divide the Commonwealth into senatorial and representative districts, and to submit the plan to the people at the general election in 1856, for their ratification. This duty, the legislature of 1856 must perform, or it must fail to perform its constitutional duties. This, Sir, is what is secured by the proposition I intend to submit. It secures all that the friends of the district system can reasonably demand; more than they have had reason to anticipate at the hands of this Convention, after the adoption of the plan agreed upon by a majority of more than one hundred.

Gentlemen will say that the legislature of 1856 will not district the State fairly—that the district system will not have a fair chance before the people. The amendment I propose, provides that the districts shall be based upon legal voters—as equal in number in each district as may be—and each of the districts to be of contiguous territory. The system must necessarily be fair and equitable. The Senate is based upon population—it represents the popular sentiments in the fullest manner. That body will not consent to an unjust and unequal district system, even if the House of Representatives should be disposed to adopt such an one. I have the fullest confidence that the legislature of 1856 will fairly and faithfully discharge and perform its constitutional obligations—that it will frame a just and equitable district system for the ratification of the people.

But, I may be told, Sir, that a detailed district system, even if fairly made, will not receive the support of the people; that such a system goes to the people under peculiar disadvantages; that men in favor of a district system may not like the districts adopted. To this objection, I reply, that the friends of the district system have no right to ask and no reason to expect, that the simple proposition—"Shall the State be divided into districts for the election of members of the House of Representatives?"—shall ever be submitted to the people. The town representation plan goes to the people in detail—the people know where they are to go. If a district system is to be submitted to the people, it is fair and just that it should go to them in detail, so that they may know into what districts they are to be classed. The people ought not to be required to abandon town representation for an ideal district system. And, I venture to say, that no legislature will consent to submit the district system to the people, unless that system is perfected—so framed as to give the people a fair view of its workings.

If the advocates of the district system are not willing to allow the question to go to the people in a detailed form, they show a want of confidence in the system, and a distrust of the sentiments of the people. I am for the district sys-

tem, and I am willing to submit the question to the people, completed, and to abide the popular verdict.

It cannot be denied, Mr. President, that there is great hostility to the plan adopted by the Convention. Some of the ablest friends of the Convention—in and out of it—are opposed to it. Some of these gentlemen will acquiesce in the plan agreed upon, and will do all in their power to secure the ratification of the amended Constitution, for the sake of other reforms which have been adopted. A few other gentlemen tell us that they shall not vote for the Constitution—that they shall do all in their power to defeat it before the people. Now, Sir, I have the fullest confidence in the people. I believe that they will ratify the doings of the Convention by a decisive majority. Upon this point I feel the confident assurance of victory. But, I see and feel that we are to carry it by great efforts and labors—efforts and labors we know how to make, and which we shall make.

If the Constitution goes out to the people in its present form, I tell its friends that it is to encounter the fiercest opposition. Powerful interests are combining to defeat its ratification. Money will be poured out like autumnal rains to defeat it. They must be prepared to carry it by main strength before the people. It will demand immense efforts to repel the onslaughts that will be made upon it, and to carry it safely through the storms of denunciation which its opponents will hurl upon it. The presses of the opposition to the Convention have opened their batteries upon the plan adopted. They are preparing to pour upon the friends of that plan, and upon the friends of constitutional reform, an unremitting fire to be continued from this time to November next.

Sir, I have watched, with some little care and interest, the course of the presses opposed to this Convention, and I am constrained to say, that from the hour of the meeting of the Convention to this day, these presses have done all in their power to misrepresent the acts of the Convention, and the members of the majority of the Convention; they have done all in their power to prepare the minds of the people to reject the doings of the Convention. These presses, the exponents of the party whose organs they are, have seized upon the inequalities of the plan adopted as the basis of the House of Representatives, with the hope that they may defeat the amended Constitution, and bury its friends beneath its ruins.

Sir, the adoption of the proposition I intend to submit as an amendment to the plan proposed by the gentleman from Taunton, (Mr. Morton,) will spike these batteries—silence them, and break the power and force of the opposition now forming to assail the amended Constitution. Sir, I have reflected upon this proposition; I have slept upon it; and I am sure its adoption will crush all opposition, and carry the amended Constitution triumphantly before the people. Leaving to the friends of the district system a fair opportunity to obtain it three years hence—an opportunity which they cannot have unless such a provision be incorporated into the Constitution—it will bring—it must bring to the support of the amended Constitution, friends and supporters from all parties. Yes, Sir; its adoption will unite all the friends of Constitutional Reform, and it will draw thousands from the ranks of that party whose opposition to this Constitutional Convention its best and most sagacious men feel to have been a political blunder.

To the advocates of the district system I appeal to support this amendment, because it secures to you the right and the privilege of taking the sense of the people upon that system three years hence. To the friends of town representation I appeal to support this amendment, because it secures to you the adoption and fair trial for two years of your favorite system of representation. To the friends of the amended Constitution I appeal, to vote for this amendment, because its adoption will draw the fire of the batteries of the opposition—break the force of the opposition to the ratification by the people of the work of the Convention, and carry gloriously through the reforms which we have adopted at so much cost of toil, time and expense.

Mr. President: I give notice that I shall, at the proper time, submit the plan I have read to the Convention. I have read it, so that gentlemen of the Convention may understand what are its principal provisions.

Mr. HOOPER, of Fall River. I am glad that the gentleman from Natick, (Mr. Wilson,) has come forward with a proposition of this character, and which I hope his friends will support. Although I much prefer the proposition of the gentleman from Taunton, (Mr. Morton,) and shall do what I can to support it, yet I am willing, if I cannot get that, to accept even this, because it gives me some ground on which I can stand. I believe, that if the Constitution goes out to the people without some provision of this character, it is destined to be defeated. I am confident of it, Sir, for I hear it said, over and over again, every day, by those who have the means of knowing something of the views and feelings of the people, that the friends of this Convention cannot be brought to support this Constitution, without the adoption of a plan of

this kind. I apprehend, Sir, that the plan which has been adopted, is more defective than it is generally supposed to be; and, Sir, every provision for its future amendment, only goes to perpetuate these defects, and make the plan even worse for the future than it is for the present. If its operation were to remain precisely as applied to the existing condition of things, it is quite possible that the people might accept it and let it stand. But, Sir, what is to be the future effect of it? Let us suppose that the whole increase of the population of this State, is to be confined to the large towns and cities sending more than one representative. Let us suppose, also, that within the next twenty years we should increase in population to three millions—what would be the result? Simply that the number of inhabitants required to elect more than one representative in a town or city, will be enormously increased, while those towns, no matter how large their population, that are now entitled to send more than one member to the House of Representatives, will still only have the power of sending their present number, unless their individual rate of increase shall exceed that of the whole State. Under the present provision, should such an increase take place in large towns only, it might result that less than one-fifth, or even one-eighth of the people of the Commonwealth might elect the majority of the House of Representatives, and you propose that all future Conventions shall be called and constituted on the same unequal basis. What, then, is the chance of ever peaceably getting an equal system, unless some provision of this kind shall be incorporated into the Constitution?

Sir, I am surprised to see gentlemen undertake to support such a system here; and I was not less surprised to hear the gentleman from Boylston, (Mr. Whitney,) who professes to have a conscience, and who appears to be very conscientious and honest on all other subjects, supporting the unequal system which has been adopted. Let me put this matter in its right point of view. Suppose that the political franchise, as bequeathed to us by our fathers, was a legacy involving a money consideration in the shape of an annuity to each voter, each to share equally. How would you divide it? By giving to one man six or eight times as much as you give to another? I ask if that would be regarded as right or honest, by the gentleman from Boylston, or if any man, under such circumstances, could be found, who would claim a larger portion for himself, than he would concede to every other man, as his just right? I do not believe that any just or honest man would do it.

Now, so far from the proposition of the gentleman from Taunton tending to complicate this matter, I think its tendency is quite the reverse. What is the proposition? In the first place, every man is called upon to say whether the old system shall be abrogated or not. If the majority vote for abrogating the old system, why of course it will be done away with. Then every man who is called upon to say whether he is in favor of sustaining or abrogating the old system, is called upon, at the same time, to vote in favor of one of the two propositions here offered—either the town system we have already adopted, or the proposition of the gentleman from Taunton. And, Sir, I must say that that seems to me to be a very plain proposition, one very easily understood, and one with which I could cheerfully and confidently go before my constituents, with an expectation of success; and, with such a provision, I could advocate the Constitution in every other respect, because I could then take my stand in the affirmative, on a question involving a matter of fundamental equality. I should, therefore, much prefer the proposition of the gentleman from Taunton, to the old system, and should consequently vote for the abrogation of that system, as would every other man who should prefer either of these new propositions to it, and the result would necessarily be the abrogation of the old system, and the adoption of one or the other of these new propositions, as the people should prefer. In that way you will let the people vote upon the matter as they please. And why should they not?

But the gentleman from Natick says, that the system we have adopted has been adopted by an overwhelming majority of the Convention, and that the Convention reflects the sentiments of the people of the Commonwealth. Is that so? Has that gentleman examined the yeas and nays as they have been taken on this question, and ascertained how many of the people are represented by that majority? Sir, you will find that the majority of the people of the Commonwealth, who are represented by the minority on this question, on this floor, have voted against it; and if these representatives have represented the views of their constituents correctly, it must follow, as inevitably as night follows day, that this plan cannot be accepted by the people of the State. Sir, the representatives of nearly three-fifths of the people have voted against it, while the delegates of only about two-fifths have voted for it. Sir, that fact is ominous of its fate, unless it shall be accompanied with an alternative proposition, or some scheme by which its monstrous inequality can be remedied.

Now, Sir, let us have a system upon which we can unite. I prefer the plan of the gentleman from Taunton, (Mr. Morton,) but if we cannot have that, let us have the plan of the gentleman from Natick, (Mr. Wilson,) as a ground upon which we can stand; and we can say to the people, if you do not like this, you have the power to change it two years hence, and the power of obtaining something like an equal plan. It is true that bases it upon legal voters, but I am willing to put both House and Senate upon the basis of legal voters, if we cannot have them upon the principle of equality. For these reasons, I hope this Convention will have the good sense to secure the adoption of this Constitution, as I think they will, if they adopt either of these plans, but without which, I do not believe the people will accept of it.

Mr. ALVORD, for Montague. I think there are two fatal objections to the plan proposed by the gentleman from Taunton, (Mr. Morton). In the first place, by putting forth these three questions to be acted upon by the people at the same time, and in the manner proposed by him, his plan will practically defeat his object. Every man who prefers the existing system to either of those proposed, will, of course, vote upon the first question in the negative. Two other classes also will be likely to vote in the negative upon that question. Gentlemen who prefer the system proposed by this Convention, to the present existing system, but who yet fear the adoption of the district system, and would rather continue as we are than adopt that system, will vote "no" upon the first question, so as to make no change, because they fear that the effect of any change will be the adoption of the district system.

On the other hand, gentlemen who desire the district system, but who fear the adoption of the system proposed by this Convention, will, from the fear of that, vote "no" upon the first question. These three classes together will be likely to make a majority of "noes" on the first question, thus causing the defeat of both plans.

There is another fatal objection to the plan proposed by the gentleman from Taunton. Your system of representation in the Senate, as adopted by this Convention, is unfair, unjust, and unequal. That system of representation in the Senate gives to one voter in the county of Suffolk nearly three times the weight of a voter in the western part of the State. Well, Sir, if that system in relation to the Senate stands, there should be somewhere some counterbalancing advantage to the interior sections of the State. The interior finds its compensation, now, in the House of Representatives. But by the plan proposed by the gentleman from Taunton, if adopted, the cities will still have the advantage in the Senate, and the interior of the State will have no compensating advantage in the House of Representatives.

These are fatal objections, in my mind, to the plan proposed by the gentleman from Taunton. The proposition of the gentleman from Natick, obviates both of those objections. I stand here, Mr. President, as a friend of the system of representation which has been adopted by this Convention. I have voted for it on every division, and in each of its details; and I believe it will prove in its practical workings a fair, just, and equal system, reflecting the public sentiment of this State, as fairly, as justly, as any district system which the wit of man can devise. But, Mr. President, I acknowledge the binding force of that cardinal, republican, democratic doctrine, that the people have the right, at all times, to amend, alter, and totally change their organic law and frame of government. If the majority of the people of this State desire the district system; if it be true, as has been said here, that that majority wish that system incorporated into the organic law, they have the right to demand it at the hands of this Convention. We have no right to refuse it to them. And if their will is to have a system of districts, we cannot long withstand that will, even if we desire to do so. In a government like ours, and among a people like ours, the popular will soon breaks through any contrivance, however ingenious, to restrain it. If on the other hand a majority of the people do not desire the adoption of the district system, and I, in common with the other supporters of town representation believe that they do not, we, the friends of the representation of municipalities, have nothing to fear, and can lose nothing, by adopting the proposition of the gentleman from Natick. I regard that proposition as simply a contrivance for ascertaining what is the popular will upon this point. If that will is to have a system of representation by districts, then it neither can nor ought to be resisted. If that will is to have a system of representation by municipalities, then we lose nothing, we risk nothing by putting forth this proposition to the people. In either view it is wise to adopt it. I trust that the resolutions of the gentleman from Taunton will be rejected, and that the plan of the gentleman from Natick will be adopted.

Mr. ABBOTT, of Lowell. To the proposition of the gentleman from Taunton, there is one objection, which in my mind, is conclusive. The proposition put forth by a majority of this Convention, and adopted now into the proposed Constitution, not only expresses a principle, but gives

the details; it gives the manner of carrying it into operation, so that every voter in this Commonwealth, when he comes to vote upon that question, can see precisely how it is going to operate upon himself. Now, the objection I have, and have had throughout, to the district system, is that it is unfair for this reason: that those in favor of the district system merely enunciate a principle; simply say, that the Commonwealth shall be divided into districts, upon the principle of equality. That is easy enough to say, and every man can understand the principle. But, after you have enunciated the principle, it is quite a different thing; and not so easy a matter to carry that principle out into operation, so that the people shall be satisfied with the scheme carried into operation. In the one case, in the case of the basis adopted by the majority, you have the details, the body, the blood and the bones, and in the other case, you have merely the spirit without even a skeleton. Every man will see that the principle is right, that every person should have a political equality of rights; but, Sir, the difficulty is, in this Commonwealth, divided into towns as we are, to carry that into practical operation. I believe, that if any district system based upon equality, were absolutely reduced by this Convention to a system, and your districts were made, and, as made, put before the people, it would be the strongest argument used in favor of the system which we have adopted.

Now, Sir, I go for the proposition of the gentleman from Natick, for this reason: if the people of this Commonwealth do, in fact, desire the district system, I am quite content that they should try the other system, if they have the system reduced to a system. If they have the districts marked out and placed before them, I will be willing to go to the people of this Commonwealth, at any time within ten or fifteen years, with confidence, that they will reject any district system, whenever that system shall be reduced to practice, so that every man can see in what position he is putting himself by voting for it. Every man could look to his district and see where he was. Carry that into practice, and there will be no trouble about the district system. Sir, I have great confidence in the system which we have adopted. I believe there is great fairness in giving to the people of this Commonwealth, a majority of them, not a plurality, not a body chosen on our system, after having tried our system for two years, to say whether they will retain it, or whether they will have a district system when it is worked out in practice. But I do object to the proposition of the gentleman from Taunton, which puts a mere principle to the people of this Commonwealth, and which does not put to them the practical workings of that principle, so that they can see for themselves for what they vote.

Mr. SARGENT, of Cambridge. The gentleman from Lowell, (Mr. Abbott,) objects to the proposition presented by the gentleman from Taunton, from the fact that it does not present the details of the system, and because, as he says, there is neither blood, nor bones, in the system—aye, not even a skeleton. Now he has voted for the district system for senators; he has put that before the people; and I ask him where the blood and the bones, or the skeleton of that system is? He there puts forth a principle, just as we propose to put it forth by the measure presented by the gentleman from Taunton, without the blood, the bones, or the skeleton. But he objects that we put the representative system forth upon the same basis. Now, I say to that gentleman in reply, if he is not afraid of his senatorial system, if he will give us the blood, the bones, or even the skeleton of those districts, we will give him the blood, and the bones, of our representative districts, and go with them before the people. That is what we wish to do.

Now, Sir, the gentleman says he puts this question into the hands of the majority of the people of the Commonwealth to decide. I take a different view of the subject; he puts it into the hands of the legislature, controlled by the friends of the very system you have adopted; a legislature elected under a system by which one-third part of the people, and they opposed to the system, have the power to say how these districts shall be formed, and they can, if they choose, form them in such a way that not ten thousand men in the Commonwealth will vote for them. You propose to put the question to the people in that way, and if they reject it, you will say they are not in favor of the district system. I say give us the alternative, and if the gentleman wants the districts drawn out, give us the senatorial districts upon which we can base it, and we will draw it out and put it to the people, with the blood and the bones in it, so that they can clearly comprehend it, and we will cheerfully abide the result.

Mr. DURGIN, from Wilmington. I may say I am deadly opposed to the district system, and, as I have said before upon this subject, I do not believe that the people of this Commonwealth desire it. If I really thought they did desire it, I should go for it. But, Sir, I should go for it on the same principles and for the same reasons that God gave to his ancient people a king. He gave them Saul, the son of Cis, who ruled them as with a rod of iron, until they had a king to

their heart's content. So I might go for giving them a district system. But it is my opinion, that though the people might want a district system, yet it would be detrimental to the highest and lasting interests of the Commonwealth. This is my serious, solemn conviction. Now I want it distinctly understood, that if I go for the proposition of the gentleman from Natick, it will not be because of any want of confidence in the system adopted by this Convention. I have perfect confidence that the people will adopt it, notwithstanding the warm argument of my friend from Fall River, (Mr. Hooper). He was the warm friend of the district system, and that accounts for his warmth of soul upon the subject. But he sees, not with my glasses, or with my eyes, but his own. The district system will be attended with insuperable objections. You bring many of these towns together with diverse interests, and the match and marriage of them is not made by themselves, but by a foreign power. You bring these towns up, and say you want to unite them in wedlock. But they say we cannot submit to that. We cannot submit to being united to such and such a town, and, unless we have the power and the voice to determine the matter, we will not submit to it.

But if the people really desire it, as a kind of quietus, I don't know, after all, that I shall say no to that proposition, although my confidence in the present system is strong, and not at all weakened by any fear that the people will not approve of it. For the last fifteen years the small towns might have had the district system if they would. But there is not a single instance in which they came together.

If the system of the majority be adopted, the small towns have the privilege of coming together and forming districts, and some of the towns may, perhaps, avail themselves of the privilege, but you will not find a majority, if any of them, that will unite. I think, therefore, it is safe; it will do no good, and it will do no harm. Gentlemen are afraid of the press. Why, Sir, what harm can a newspaper article do? Anybody can write a newspaper article, but it will not produce any disastrous effects at all. I will not for a moment entertain the least degree of fear, or want of confidence in the system that has already been adopted in this Convention. If I vote for the amendment of my friend from Natick, I wish it to be understood that I vote for it, not because I have the least want of confidence in the system adopted by the majority, but for the sake of a quietus, to gratify the peculiar feelings of some of the members of the Convention, and perhaps of some people out of the Convention. That is the only reason why I vote for the amendment. And, Sir, if I vote for the amendment, it will be for this additional reason: that the district system there proposed is clear and distinct, and the people voting on it will act understandingly—act upon something not imaginary, but something tangible—something comprehensible.

Mr. CHURCHILL, of Milton. When this subject was under discussion, sometime since, I was in favor of the district system. I am still in favor of that system. But, Sir, although I should prefer to have the plan we have adopted wholly changed, or materially modified, still, as it is decidedly preferable to the old system, because it districts the cities, I think I can conscientiously support it, before the people, with most of the other reforms adopted by this Convention. Whether the proposition of the gentleman from Natick, (Mr. Wilson,) is accepted or not, I may therefore support the system adopted by the Convention, by my vote at the polls. Still, I trust, and sincerely hope, the proposition of the gentleman from Natick will be adopted. While it does not, necessarily, imply any want of confidence in the system which the Convention has seen fit to adopt, I believe it will add incalculable strength to the cause of reform. It will enlist in favor of the reforms submitted by the Convention, the support of many members of the majority in this Convention who have opposed your representative system. Sir, I believe, as has been stated by the gentleman from Lowell, (Mr. Butler,) there may be some doubt whether the district system, if submitted to the people, would be adopted by them. But I believe there is no danger or difficulty whatever, in submitting the alternative, and I ask those who have firmly and successfully stood by town representation, to give their friends who differ from them, an opportunity to submit the district system to the people. Whether the people are in favor of the system which has been adopted, or prefer the other, can only be known by voting in favor of the proposition of the gentleman from Natick, which submits both plans.

Mr. DAVIS, of Plymouth. I have uniformly recorded my vote against the proposition which has received the sanction of the Convention. But I feel it incumbent to say a few words in regard to the proposition of the gentleman from Taunton, (Mr. Morton,) and that of the gentleman from Natick, (Mr. Wilson).

I consider myself, Mr. President, as fully and fairly beaten in the Convention, upon the question of representation. So far as my own views are concerned, I have not been convinced, as the gentleman states he has, of the fairness, the jus-

tice, and the equality of the system of representation which has been adopted here. But inasmuch as it has received the full, and apparently the hearty sanction of the majority of the Convention, I think it is not for us who are in the minority, to think we can exact terms upon which we are to get a more equal system of representation. We all agree that the system submitted by the gentleman from Natick is more equal than that adopted by the Convention; and if the proposition of the gentleman from Taunton is voted down, I shall vote for it. It is not for us to dictate the terms upon which the question is to be submitted to the people, and for one, I am willing to take what I can get. I think it my duty, at this time, to go for what the majority are willing to give us upon this question.

Now, Sir, for one, I should greatly prefer that a proposition should be submitted to the people, at this time, like, or something like, that proposed by the gentleman from Taunton. I can see no real objection to offering it as an alternative proposition. I see no reason why it should be regarded as disastrous to the proposition presented by the majority; but I see sufficient reason for it, in the fact that it would present an answer to the argument which has been repeatedly presented here—which was conclusive in the mind of the gentleman for Marshfield, whose speech, permit me to say, it seemed to me, was stronger in the head than in the tail. His argument was founded—if I understood him rightly—upon the supposition that the people were not ready for the district system. Another gentleman took the same ground in his argument. They are in favor of the district system, but give their sanction to the system proposed by the majority, upon the ground that the people are not prepared to receive the district system. The same argument prevailed in a previous Convention. It is an argument that has thus far been fatal to the district system, and for this reason, if for no other, I am in favor of the proposition of the gentleman from Taunton, for the purpose—if I may be allowed the expression—of clinching the nail, and of giving the people one opportunity of saying for themselves, whether they are ready for the district system or not. How long are we to reform the Constitution, and call Constitutional Conventions in Massachusetts, and allow the argument—which, I must confess, savors rather too much of the politician, which looks a little too much like being designed to tickle the ears of the people—to prevail, that the people are not yet prepared to receive the district system? When are you going to find out whether the people are ready or not? Now I submit that here is an opportunity presented, in the proposition of the gentleman from Taunton, for solving that problem—of ascertaining whether the people are ready or not, without hazarding the other reforms which you propose—without hazarding the adoption of the Constitution as a whole. If you do not distrust the system you have recommended, why not give the people an opportunity of saying which they like best? Why allow the argument to be adduced, year after year, against the district system, that the people are not ready to receive it, without giving them an opportunity of verifying the assertion?

It is for that reason, that I prefer we should submit at this time alternative propositions. I do not believe the people are so weak, so ignorant, or so confused, that they cannot read and understand two propositions at the same time. I do not believe, either, that if we present a district system, the people ask to have the districts cut and dried beforehand. I believe there is sense and justice enough in Massachusetts, in the minds of the people, to say whether they are in favor of a district system, each district to be comprised of an equal number of voters or inhabitants, as the case may be, without waiting to see whether the line will cut through the corner of this town or the corner of that. I am opposed to a district system that shall divide the small towns; but I can see no good reason why the general proposition of a district system should not be submitted at this time to the people, as an alternative proposition.

But, Sir, I rose merely to state my views upon these propositions, and not to go into any argument upon them. I am willing to vote for the proposition of the gentleman from Natick, believing that I cannot get the other proposition. I will go for submitting a proposition to the people for a district system, founded upon voters, for the purpose of allowing the people the opportunity of once expressing their minds upon this subject; and and I do not see how they are to have the opportunity, unless we accept the proposition of the gentleman from Natick. If it is true, as gentlemen agree, that the people are not prepared for such a system, I am in favor of giving them an opportunity of saying to their fellow-citizens and the world, that they believe a republican commonwealth cannot exist here in New England, founded upon an equal and just representation of the popular sovereignty. I want them to have the opportunity of saying they believe a House should be made into a Senate, and founded upon corporate sovereignty, and that the Senate should be made into a House, the strongest element in which shall be the city of Boston.

Since the debates in Committee of the Whole upon the system which the Convention has sanctioned, have been published—for I did not have the pleasure of hearing them—I have read them, and I am more and more convinced that we have adopted a system of representation, by which, in principle, we have turned the House of Representatives into a Senate, and made the county of Franklin and the western counties of the State, with their corporate town rights, the strongest element of power, while we have made the Senate the popular branch, and we have made the non-voters of the city of Boston the strongest element of power there. Sir, I am in favor of submitting some proposition to the people which shall provide for more equal representation.

Mr. SCHOULER, of Boston. The proposition of the gentleman from Taunton (Mr. Morton) is a clean, clear proposition. It is one that every-body understands. It brings the question, whether you will adopt a district system, before the people some two years sooner than under the proposition proposed by the gentleman from Natick. It brings it before them at a time when they are called upon to consider and decide other questions of fundamental law, and therefore there is a propriety about it. It is connected with the adoption of the Constitution as amended, and will come before the people at a time when their attention is called to the subject. I am surprised to hear the gentleman from Fall River (Mr. Hooper) give up this proposition without a trial, because he thinks it cannot be carried. Sir, we should never carry anything, in this or any other body, if the friends of the measure give way for fear they shall not. Why not stand up for the proposition of the gentleman from Taunton, until it is voted down, and then we can try something else—perhaps the proposition of the gentleman from Natick. But, Sir, I wish to call the attention of the Convention to the details of that proposition. If the proposition of the gentleman from Taunton is voted down—and I hope it will not be—then we must take the proposition of the gentleman from Natick, or nothing. Now, Sir, that amendment does not provide for submitting the question to the people, in 1856, fairly. It is to be submitted in a way that will be sure to kill the district system, if anything can, because there never was any measure so complicated as the details of a district system must necessarily be, that did not gain enemies. If you submit the details of the system along with the system itself, I care not with how much fairness the districts may be apportioned, some towns will want to be in another district, some towns will complain because they are divided, and others because they are not divided; and therefore, they will vote down the whole system. It will not be submitting the question, whether there shall be a district system, fairly to the people. If the proposition of the gentleman from Taunton is voted down, I shall then submit an amendment to the proposition of the gentleman from Natick, to strike out that portion of it which provides for submitting the details of the district system, so that the plain, clear proposition may be presented to the people in 1856, whether there shall be a district system for the election of representatives and for the election of senators, founded upon legal voters or upon population, as the case may be. I cannot understand why gentlemen should wish to legislate in the Constitution upon this subject; for it is legislation, and nothing but legislation. What we want in the Constitution is principle, and not the details of legislation. Sir, I tell gentlemen there is something behind all this. These details are put in to kill the proposition itself when it goes out to the people. It is only presented as a sort of decoy duck, to draw votes for the system the majority have adopted.

Sir, I can see no argument against such an amendment as I have indicated, to strike out the details of the system which it is proposed to submit. Let us have the plain proposition presented to the people in 1856, whether they will have a district system, or not. I am willing to take the proposition of the gentleman from Natick, with that amendment, if the proposition of the gentleman from Taunton is voted down.

But, what do we really gain by such a proposition to submit the question to the people in 1856? The legislature may, at its next session, if it chooses, submit the question to be voted on by the people in 1855. They have the power, under the Constitution, to submit the question to the people at any time. But, if the proposition of the gentleman from Natick, is put forth as a compromise, and if the gentlemen of this Convention will vote to strike out of that proposition its detail, so that the people may have the opportunity to vote yea or nay upon the principles of the district system, without being encumbered by the details—by the division of towns, for and by local questions as to the formation of districts—I will vote to incorporate it into the Constitution; but, unless such an amendment is adopted, I shall vote against it, because it is all a sham, and nothing but a sham, to get votes for the Constitution.

I would rather have the Constitution remain as it is. I hope those gentlemen who are in favor of a district system, will vote in favor of a district system, and in that category I hope to find the

gentleman from Fall River, (Mr. Hooper); and if that proposition be voted down, I hope the proposition of the gentleman from Natick, will be either amended or rejected.

Mr. BUTLER, of Lowell. The Convention having adopted, as the basis of representation, the plan which I had simply the honor of selecting from the various plans proposed, not claiming for it any originality, I deem it not out of order, nor improper, that I should say a word upon this plan which is now proposed. And I wish to say, first and foremost, that my judgment continues to approve of the plan of representation by towns. And, in any event, whatever may happen, until I am much better advised than at present, I shall vote for, and advocate to the extent of the poor ability God has given me, town representation. But, Sir, it is proposed on the other hand, that there should be a system of district representation left to the people, and we are sometimes taunted with being afraid of the people. Now, Sir, I am not afraid of submitting to the people any fair proposition. And if I considered the proposition of the gentleman from Taunton a fair one—not that he has meant anything wrong by it—but if I considered it a fair proposition, as opposed to town representation, I would vote to have it go to the people. But I do not so consider it; on the other hand, that the plan which was suggested by the gentleman from Natick, has the elements of fairness as opposed to town representation, and I am willing to try the sense of the people upon it, if the Convention are so willing.

I will give my reasons for the distinction. Every man knows the disadvantages of town representation; every man sees the boundary of the town he lives in; every man knows exactly where the town lines are; he has it all mapped out in his mind and laid down, fixed and determined. But, the system of the gentleman from Taunton, is an ideal system, a theoretical system which is made on paper without being mapped out, and is made, when voted for, in the mind of every voter, as his own interest dictates. Every man who favors it, says I am in favor of it; first, because it is just, and I am in favor of it secondly, because, whatever I find bad in town representation, I can have remedied in my district. That district will be made just so as to suit me, I shall be exactly satisfied and contented in that district. Each man makes in his own fancy, a *beau ideal* district, with all the pleasantest men he can think of around him, and he puts himself in the centre of that district and sees himself elected to the legislature from the district, and so hurras for the district system. This happens from a *beau ideal;* from every man making a system to suit his own mind. But, when a district system is sent out to the people, I want one as the towns are, mapped out, the lines running here, taking in this neighbor and leaving that one out; bringing in this valley and that mountain, so that it can be seen that it brings this set of men and that set of men together. Then we can see the difference, and see what there is of it, and see what you mean. And I can tell you it will look as different to men after they see its beauties, and its defects, as they are made apparent, as the angel girl some men court, looks different from the sluttish wife they find they have married. [Laughter.] One is all that is lovely, and good, and beautiful; the other is a very different affair. So let me tell gentlemen it will be with the district system. Leave every man to make a district to his own mind, and he will make a splendid district, having everything of beauty and equality in it. But, if he at first sees the lines are to be run here, and the lines run there, he will not accept it.

I was neither amazed nor surprised when our friends from Boston wanted to district their city for common councilmen; they did not put it on population, for it might have brought Beacon Street near to Ann Street; they took a basis which has been taken in this proposition, founded upon legal voters. I do not desire that every man shall make the lines to suit himself. I want Beacon Street to see that she is in juxtaposition with Ann Street, and then see if Beacon Street would vote for the district. I want Fall River and Hull put in juxtaposition, and see if they will vote for such a district. When this is done, I am ready that such a district system shall go out to the Commonwealth. But when you get the ideal beauty and the theoretical constitution which the French theorists made, it is a cheat and a humbug, and men are voting for what they do not want.

Mr. SCHOULER. May I ask the gentleman one question?

Mr. BUTLER. Yes, if you will be quick, as my time is limited.

Mr. SCHOULER. I would like to know if the district system for senators which the gentleman voted for, is an ideal system?

Mr. BUTLER. O, yes, Sir; and this is just the difference; and I will give you a comparison. The senatorial district system will cut the Commonwealth into forty districts. It will make the same difference that there is between cutting up a pig into four quarters, and cutting him into sausage meat. [Laughter.] I understand the senatorial division to be the cutting into four

quarters; but when you come to sausage meat, I wish to know whether I shall get the piece I prefer. That is the difference, and that is the trouble I have with the proposition of the gentleman from Taunton.

Mr. SCHOULER. As I understand the distinction which the gentleman makes, it is that he prefers the whole hog rather than the pieces.

Mr. BUTLER. Precisely. Then I would not have gentlemen build too much on my comparison; I made it for the gentleman from Boston. That is the difference I make. I wish to know which piece I am to have—whether I am to have the snout or the rib; I want to know where I am to come in for a share. Then I can know how to vote. Every man, when he goes for the proposition of the gentleman from Taunton, expects to get the middlings.

The reason why I support this form of district system is, because I am in favor of town representation, and I mean to fight for it and stand by it to the extent of my strength. But I do not think there is any more danger of the adoption of a district system, where we know the lines, than there is of Cape Cod moving up to Berkshire. It is an old maxim, "*egnotum pro magnifico*"—the unknown is taken for the magnificent; "distance lends enchantment to the view," and want of knowledge has much the same effect. I want to ask Berkshire when, by a district system, it is proposed to be put alongside of Cape Cod—now, are you ready for that, or do you want to stay by the old town? Now, as I have said, to prevent that result, we can give the power to the legislature to make the districts. Or we may make the system, and it will be so bad that the people will not accept it. I would be willing to take the system published by the able and intelligent editor of the *Advertiser*, in his paper, as *the* district system. I should be willing to go to the people to-day, to know whether they would accept that system or the town system, and abide the answer. I would be willing to have that put to the people now; only give me something practical, something tangible, something that we may see, that we can talk about and can point out. I grant that the gentleman from Boston (Mr. Schouler) is quite right, that if we make a district system so that you can see the corners, it will not be adopted. I know it. He says it will bring up objections to it. I know it. I wish to see those objections fairly tested. How does the gentleman from Natick propose to do it? He proposes to leave the legislature to do it. If we had time to make it, we could do it; but we have not, and we say we will leave it to the legislature. Let no man say you will have unequal districts. Your population basis for the senate will help to make the districts. Then make the districts, make them as well as God has given to human ingenuity to devise, and I do not care; they will fall to pieces as soon as flax, which "falls asunder at the touch of fire." You cannot make them so well but that they will crumble to pieces. But when you can allow every man to fancy a district as a *beau ideal* of his mind, or as an illusion of a dream, he will make utopian districts alone, and I fear to put that to the people as a delusion which tends to lead their minds away from the reality. Therefore, as at present advised, I must vote against the proposition of the gentleman from Taunton, as I always have voted against it.

But, on the other hand, to show that I am not afraid of the people; to show that I am ready to go to them with a district system which will be tangible, the lines of which we can know and see, as town lines are seen and known, I am ready to vote for the plan suggested by the gentleman from Natick, to wit: Let the people ask the legislature to make the districts; and, then, in God's name, if they want the system, let them have it; and, if they do not want it, I am sure I do not wish to have them adopt it. These are my reasons for voting against the proposition of the gentleman from Taunton, and in favor of that of the gentleman from Natick. If other gentlemen approve them, I trust they will go with me; if not, I shall at least have the privilege of putting myself right before the Convention.

Mr. GARDNER, of Boston. The cat is out of the bag. Let the phonographic reporters of this Convention put it down in black and white; let the people of this Comwonwealth know the statements made by the gentleman from Lowell. What are they? He is afraid to trust the people. His own words. He is afraid to let the people say whether they will have single districts or not. His own words. He is afraid the Utopian scheme may be carried. His own words. He is afraid——

Mr. BUTLER. Mr. President——

Mr. GARDNER. I presume the gentleman will withdraw his words.

Mr. BUTLER. No, Sir; I will not withdraw anything. I wish only to have that stated which I did say. I deny that I said what he has stated. That is as wide a mistake as he made before.

Mr. GARDNER. The gentleman will deny it. But he is afraid to have this question go out to the people, for fear they may decide to have the district system; he is afraid the utopian delusion may beguile them; and he therefore fears a popular majority may decide in favor of a district

system, if the amendment proposed by the gentleman from Taunton is carried.

Now, what is he afraid of? He has told us that too. He has, very fortunately, kindly told us, what he is not afraid of, as well as what he does fear. Now, what is it? He is willing to adopt the proposition of the gentleman from Natick; he is willing to send to the people a district system, provided it is cut and carved beforehand; because, says the gentleman from Lowell, I know that will not be adopted. Now, is not this plain to the Convention? Is not this perfectly absurd, and nonsense, and ridiculous, to endeavor to present a scheme for our adoption, which the gentleman rises in his place and says of it, I know that it will not be adopted. Now, I put it to him; if it does not convince him, I put it to other members of the Convention, if it is not the height of absurdity for us to pretend to adopt the scheme of the gentleman from Natick, which he has given notice of, when he rises and says, I know it will not be adopted. Sir, he has confessed, not in language but in fact, his intention to throw dust in the eyes of the people; to hold out to them a pretended proposition, with the pretence of fairness, which, he says, he knows they will never adopt? Now, for one, I despise any such proposition; I disdain and spurn the bribe; I will not vote for anything that I know the people will never sanction. The time of this Convention is too precious; the purpose for which we were sent here is too sacred to trifle in such a way with our constituents.

Now, we have here a tangible and distinct proposition, and I desire that the feelings and views of the Convention shall be fairly and freely expressed upon it. It is simply, in a few short sentences, the opportunity of presenting the alternative to the people of the Commonwealth, to allow the legislature to district the State into equal districts for the choice of representatives, in contradistinction to town representation. This, Sir, is fair, is honest; and I appeal to every member of this Convention, that were it a question between man and man, of simple every day honesty and morality, could he oppose it? But, when we come here under our sacred oaths of office; when we come here as representatives of the Commonwealth; when we are their exponents, and when their feelings, views, and wishes are doubted or denied here; can we then, as honest, and fair, and just men, refuse to submit an ultimate decision to that great tribunal? We shall soon know who, here, are willing to trust the people. Aye, more, we shall know who are willing that the people shall decide which system they prefer.

This is a question which is separated from party politics; it is a question which ought not and cannot, be justly mixed up with any party sentiment whatever. It is simply a question whether the people who sent us here shall prefer, and wish, and require, one of two plain propositions.

Now, Sir, what arguments can be brought, what reasons can be given, why this should not be sent to the people to decide? It is said here, by the gentleman from Natick, that he fears this question may cause confusion at the polls. I can tell him that the people of this Commonwealth value too highly equal representation; the people of this Commonwealth are too intelligent, and they know too well the value of equal representation, to allow a plain abstract question of this kind to cause confusion at the polls. There are too many churches and too many schoolhouses in this Commonwealth, if not in Natick, to permit the people to become confused by a plain proposition of this kind. I would as soon suppose a gentleman would say they would be confused if a man should put the question to them whether two and two make four, as that they would be confused by a proposition of this kind. If you ask the people whether two men in Barnstable should equal one man in Franklin, or whether one man in Franklin should outweigh seven or eight men in Suffolk, the people would be confused, and cannot give an honest, mathematical answer! Is that the sentiment, is that the opinion the gentleman from Natick entertains of the people of Massachusetts? He is afraid they will be disturbed and confused by a question so papable as that. That is the idea at which he is alarmed. I ask this Convention if they go with him in the fear?

Now, I should like to have gentlemen rise and state what possible objection there can be to this proposition, except the alarming, wonderful objection which the gentleman from Lowell has already stated, the objection that he is afraid lest the people will adopt this proposition, if it is sent to them. If that is the argument, I hold that it is conclusive that every member of this House should send the proposition to the people. He begs the question, or rather he acknowledges the necessity of the question; he acknowledges hat the people want it; he confesses they will adopt it. Therefore, I say we are bound, by his own showing, to send it to them, and let them have the opportunity of trial.

Mr. BATES, of Plymouth. I have but a very few words to say, and will detain the Convention but a few moments in this stage of the debate upon the question now before us. I have listened with attention, for weeks, to the discussions upon the question of representation, without having

participated in that debate. When I have heard gentlemen, in derogation of the system of town representation which has been adopted by this Convention, so repeatedly make the assertion which has just been made by the gentleman from Boston, (Mr. Gardner,) that one man in Franklin equals five or six in Suffolk, and when I have known at the same time, that this Convention, with but four or five dissenting votes, has formed a district system, which in the election of senators and councillors, gives to Suffolk County—a county which for the last twenty years has cast less than one-half as many votes in proportion to its population, as the county of Franklin—its full representation upon a population basis, I have been strongly tempted to rise in my place and say that I disdained any such comparison, but I have not done so. I came here, Sir, a friend to town representation, as a question of principle, nor have I yet heard any arguments which have shaken my convictions of its justice; and when I voted for a district system for senators and councillors, upon a basis of population, I did so with the expectation, if not with the understanding, that there was to be an equivalant in the establishment of a basis of town representation for the House of Representatives, and nothing but such an expectation would have induced me to cast such a vote. Now, if there is any one act of mine in this Convention which I believe my constituents will disapprove of more than any other, it is, that in some stages of the question—though not on the final passage—I supported a population basis of representation for the Senate. But, Sir, that act has passed, and I apprehend this Convention is not to reconsider or reconstruct it. Then we have adopted a system of town representation for the House of Representatives. I am not of that class of individuals who are frightened by the bugbear stories about this basis being unjust or unpopular, or that it is to transfer our whole government into the hands of a very small portion of the people; and least of all, am I alarmed at the newspaper paragraphs in regard to it, to which my friend from Wilmington, (Mr. Durgin,) has alluded.

Now, here is a proposition of the gentleman from Taunton, (Mr. Morton,) and what is it? Why, it is said that it submits to the people a district system. What is the fact with regard to it? The moment it is contemplated to complete the system before it is submitted to the people, the gentleman from Boston, (Mr. Schouler,) rises in apparent alarm, and says, that if you make these districts so that the people can look at them, they will reject the proposition. This, to my mind, is the strongest argument which can be adduced to prove that the people do not want a district system. Construct the districts just as they must be constructed, ultimately, and let the people see their boundaries, their advantages and their disadvantages, and the admission of the most ardent friends of the system is, that they will reject it. But, it is said, put it to the people, and let them "go it blind," as the saying is, and then if they do not like the districts, when they are subsequently constructed, they cannot help themselves. And yet, these are the men who claim to be the exclusive friends of the people. Now, if I have to put anything to the people of Massachusetts, I would put to them something which is tangible, something which can be seen and understood, and then if the people want it, I want them to have it. I am the last man to distrust the people. And, when this proposition comes up here, and it is admitted over and over again that if you put the system in detail to the people, they will reject it, I say that I am opposed to it, here, and elsewhere. I have said that I was a friend of town representation, and whatever influence I may have, if I have any, and whatever ability I possess, in the canvass which is before us, shall be exerted in support of that system; because, I believe it to be just, and that it will most effectually preserve the glorious institutions of our Commonwealth. And, I desire to tender my thanks to the gentleman from Boston, (Mr. Hale,) for having submitted to the public in detail, the proposition of the minority of the Committee, which has been rejected by this Convention; because, that course will materially aid the friends of town representation, in establishing the justice of their system before the people.

But, Sir, what is this proposition of a district system? It is that you put the question to the people, and let the legislature make the districts. Now, if the legislature must make the districts, why not let them make them first? What is there to fear? We have been repeatedly told here that we fear the people. Now, I would ask whether it is those who say let the legislature make the districts, and then let the people say whether they want the districts as made, or whether it is those who say if you want a district system, we will make the districts afterwards to suit themselves. Which is it? I apprehend that no man will rise and say that it is the class of men who put to the people what they must ultimately have, that they may see for what they vote, who betray this distrust of the people.

Now, Sir, for these reasons, I am totally opposed to putting out this intangible system of the gentleman from Taunton. The people cannot see it, and cannot decide whether they want it or not.

If districts are to be made, let them be constructed first, and then the people will have something which is tangible, and which they can understand, and if they want it they are competent to say so, and with their verdict, I shall be content. I had not intended to support any alternate proposition, but the gentleman from Natick has submitted a plan which I have not before seen, but which, as it appears at first blush, or upon the face of it, I am induced to support, because it appears to be fair, just and equal. It says to the legislature elected by the people with a knowledge of their duties, that they shall make these districts in the best manner they can, and in 1855 submit them to the people, and if those districts are just, and the people approve of them, they will say so by their votes. I shall vote for that proposition, if I have an opportunity to do so, because it carries justice upon the face of it.

But there is another strong reason why I shall vote for it. At the same time it presents to the people of Massachusetts the question of having forty senatorial districts upon the basis of legal voters. This is a question which I wish the people of the Commonwealth to have an opportunity to pass upon. They will first say if they will have a senatorial basis upon population, which gives to fourteen hundred immigrants who happen to land in Boston on the day previous to taking the decennial census, as much representation as five independent towns in the Commonwealth, by giving to those towns a partial equivalent in the House, and at the same time it gives them an opportunity to decide between this and a district system based upon the legal voters of the State. Under these circumstances, I shall support the proposition of the gentleman from Natick, if it comes before the Convention. I am opposed to the proposition of the gentleman from Taunton, and shall vote against it. For these reasons, and these only, am I induced to vote to submit an alternate proposition to the people, inasmuch as it says to them, you see what it is; if you want it, vote for it; if you do not want it, vote against it; and the question is settled, and that, too, by the only tribunal which has a right to make the decision, and whose judgment is final.

Mr. HALLETT, for Wilbraham. I am greatly obliged to the Chair for the privilege of the floor. I have been put wrong here for a day or two, and I find myself placed in a somewhat indefinite position. I think it is necessary for us who have advocated town representation, to look back and see what the basis upon which we stand is. I have been advocating, with other gentlemen, the right of towns, as several communities and municipal corporations, to representation. There were gentlemen who contended that this claim of the towns was not right or well founded, and that there should be a district system disregarding all town rights. Now, a proposition is submitted by the gentleman from Natick, which gives them the opportunity to propose to the people just what they want, if they honestly expressed what they wanted. Why do the advocates of a district system now oppose this fair offer? It seems to me there is the same inconsistency in some gentlemen in regard to this question, which I noticed when we sought to compromise on the plurality question. I and others wished to retain the majority system, and voted for the majority principle. But the moment a sufficient number to make a majority for plurality, of those gentlemen who had acted with us voted for the plurality system, those who had before most vehemently insisted on a plurality, came right round and voted against the plurality system. So that the question seemed not to be acted upon from principle, but as to who made the proposition, and how it would affect parties. Shall we take such a view of subjects here? It is neither wise nor expedient to do so. How do we know what will be the effect upon parties of any rule we lay down, that will last for any long period?

Having explained this position, in which I am content to stand on the record, I wish to answer the inquiry of the gentleman from Boston, (Mr. Crowninshield,) who desires to know what reasons there are why the proposition of the gentleman from Taunton should not be submitted, as a part of the Constitution, to the people. I can give him the best reason in the world, and I think a perfectly conclusive reason why I cannot go for that proposition, and why it seems to me no gentleman should go for it. And that is, because it leaves to the legislature an unrestricted power to *make the Constitution* in that particular, instead of having the people make it, or pass upon it after the legislature propose it; and I deny the right or the power of the legislature to make any part of a Constitution. What is the proposition? Why, that you shall give to the legislature the power to determine, without appeal to the people, whether the whole principle of representation in Massachusetts, which has stood for two hundred years, shall be entirely changed or not. I would just as soon give to the legislature the power to determine, without asking the people, whether this government shall be a republican government or a monarchy. That is the objection to the proposition of the gentleman from Taunton; because he proposes that we shall put the question to the people in the abstract: "Will you have a district system, or not, for representatives?"

And if the people should say, "Why, yes, we will have a district system," what do they answer? and what is the effect, if this proposition prevails? It is carrying out the theory of certain gentlemen who propose to submit to the people the question whether they will have a Convention, and then, after the people answer "yes," leaving the whole power with the legislature to make that Convention what they please, or repeal it when they please. This was just the doctrine on which the attorney-general told us that our present Convention was called; but we repudiated it as wholly unsound doctrine.

Mr. HATHAWAY, of Freetown. I would inquire if we are not in the same position with regard to the Senate?

Mr. HALLETT. I think the gentleman was answered, with reference to that, by the gentleman from Lowell, (Mr. Butler). That is not my point. It does not affect town rights or representation. The proposition now before us, of the gentleman from Taunton, (Mr. Morton,) gives to the legislature the whole power, at its mere pleasure, of dividing, and cutting, and carving this whole Commonwealth into representative districts, without the control, or consent, or subject to the veto of the people! That is the proposition. Therefore, I say it is giving to the legislature the power of prescribing what the limit and what the basis of your representation shall be in this Commonwealth, and what party shall be in the ascendency. We go quite far enough in doing that to which the gentleman from Freetown has alluded, in districting for Senators. Yes, Sir, we go quite far enough in leaving the legislature to make forty senatorial districts. But that is senatorial representation, and does not affect town rights. Senatorial representation does not exist as a locality, or as a corporate right of a municipal community. But the right of representation in towns exists as a corporate right which you have no right to destroy, unless by the representative consent of those who now enjoy it. That is a fundamental principle, and you must either adhere to town representation on that principle, or abandon it. If those who adhere to town representation as a right, cannot stand there, they cannot stand anywhere. Now, as this is an inherent right of the original organization of Massachusetts representation, and as towns are constituted upon corporate or community representation, I say you have no right to give to the legislature the exclusive power over a question which may, in their disposition of it, destroy that right without the consent of the people.

That is a fatal and inherent objection to the proposition of the gentleman from Taunton, and it is inadmissible, as it seems to me, upon any principle on which we stand here as a representative body.

On the other hand, the provisional proposition submitted as a compromise by the gentleman from Natick, is in conformity with the rights of the towns, and the rights of the people to pass upon a distinct question of district representation.

First, it provides that all the towns, by their representatives in the House, shall have the right to be heard in preparing the details of the system of districting the State, which the legislature are required to submit to the people. Secondly, it provides that the whole people may have a district system of representation according to the plan submitted to them, whenever the aggregate majority shall consent to adopt it. That will present the question of districting to the people in a tangible form, and they will decide upon it by a majority of the whole people, including all the towns. Now, Sir, it is conclusive, that if gentlemen who advocate a district system are desirous of having the question fairly put to the people, not in the abstract, but in well-considered detail, here is the best, surest, and fairest plan that can be devised for testing the question, by a direct, distinct vote upon it of the whole people of the Commonwealth, in which vote the cities and large towns will have all the benefit of their numbers in determining the majority.

The plan is throughout the result of representative and popular action. In the first place, the system of exact details and limits must be prepared and submitted to the Senate and House, who have got to put it forth to the people.

Who are to consent to it? Why, the legislature, who will be the representatives of all the towns in one branch of it, and without whose action this cannot be done; and if it is done by their action it is done by their consent. They, as the representatives of these communities, must agree to submit a district proposition to the people, which is to divide the State off into two hundred and forty or three hundred and twenty representative districts. Then you have the consent of the representatives of the towns to the form of proposition, and, consequently, the consent of the whole constituency that such a proposition should be submitted to the people. If the people adopt it, they adopt the proposition distinctly and definitely, and with their eyes open. And thus this plan, passed upon by the people in all its details, and not in the abstract merely, will save the State from that gerrymandering system which would be the result of the proposition of the gentleman from Taunton.

Sir, the moment you put it into the power of the legislature to frame and adopt a system of districts for representatives without going to the people, from that moment you determine the political character of the Commonwealth by the political character of the one particular legislature which districts the State. That is perfectly clear. Contiguity can easily be evaded in order to give a party majority. You may have your districts formed of contiguous territory, and yet you can take a narrow strip of land in this or that town or city as the nucleus of a district, and add to it such other portions, according to the political complexion of these portions to be added, and make a district of any politics you please. Everybody knows what gerrymandering can do to secure the control to a minority by ingenious districting of sections; and this, it would seem, is one of the most corrupt and corrupting powers the legislature can have. But if the legislature know that the people have the power, by a vote of the whole Commonwealth, to repudiate the project which they may put out, the people have a reasonable guarantee that the system will be based and arranged according to just rules. I see no inconsistency, therefore, in meeting those who are in favor of the district system, by saying, we will put into the Constitution, not an alternative proposition of town or district system, which looks as if we did not know what we were about, but an alternative power. We have put into the Constitution the town system of representation, and recommended to the people to take that if they desire it; and then we may say by this amendment, if you desire, through the power of your legislature, to make a change to a district system, here is the form to give the legislature the power to propose it. If we are to submit the district system to the people, we ought to submit it in detail, that each town may know who is to be its neighbor. This is not the place to do it. It consists of lines and boundaries and cities and towns and villages and relative population, and various other matters requiring a most minute examination, before it can be fairly adjusted and adopted. I say, therefore, if there is an honest purpose to test the question before the people, whether they will have the district system or not, the proposition of the gentleman from Natick presents it; while, at the same time, it is consistent with the views of those who adhere to the principle that the towns shall have their inherent corporate rights in the representative hall, and that no change in the representative system should take place without their action and consent. I hope, therefore, that the proposition of the gentleman from Taunton will be disposed of by being rejected, and then the question will be fairly open to this compromise proposition.

Mr. WHITNEY, of Conway. At this late hour of the session, it seems to me that it is but wasting time to enter again into the discussion of principles which lie at the foundation either of the town or district systems of representation. Much better would it be, both for ourselves and our constituents, to look and see where we stand in reference to this great question. A great conflict in the Convention, from the commencement of its session to the present time, has been had upon this question of representation; and, however it may appear to other gentlemen, it is obvious to me, that if there is anything established by our past action, if we have arrived at any positive and determinate result in this Convention, we have arrived at the result embracing town representation as a principle, which is to go from this Convention to the people, and that the district system cannot be adopted here.

Now, Sir, I admire the perseverance of the gentleman from Taunton, (Mr. Morton,) and of other gentlemen who have advocated the district system here; but I do not believe that the gentleman from Taunton, nor any other gentleman from anywhere else, favoring the district system, supposes that this Convention, after our past action, and after the long discussions we have had, and the repeated calls for the yeas and nays —I say I do not believe that any one seriously supposes that this Convention, after all this, is to adopt the district system, and submit it to the people, instead of the system of town representation which we have adopted.

Well, Sir, that being an established fact—and I appeal to gentlemen on this floor if it is not an established fact—it seems to me to be an endless waste of time for gentlemen to get up here and argue in favor of the district system, and say that we are afraid to trust the people. Why, Sir, we have prepared a system which we propose to submit to the people, and we believe that the people will sustain it. Is there any fear manifested there? Why, Sir, it is our unbounded confidence in the people that induces us to offer this proposition to them.

But, Sir, there are other gentlemen who stand up here and say that we are deceived in our judgment in regard to the wishes of the people—that the people do not desire town representation; that in this particular we labor under a mistake. However that may be, I regard the proposition of the gentleman from Taunton as involving a question which has been settled here again and again as a question to be rejected, because if it is adopted, it certainly works the death of the pro-

position in favor of town representation; because, as the gentleman for Montague has said, the friends of the existing system, who are opposed to the town system, and the friends of the district system, will combine against the town system; and, on the other hand, the friends of the present system who are opposed to the district system, will join with the friends of the town system; and thus you will kill both propositions. It does not seem to be wise to adopt any proposition which may have such a tendency. What, then, is it proposed to do? The gentleman from Natick offers a proposition—a proposition which I must confess I have never seen nor heard of until this morning; it is entirely new to me—which strikes me as having the elements of fairness in it, and which ought to command the support of the friends of the district system. Here it is, a complete district system in itself, which we propose to submit to the people, as soon as we have had time sufficiently to mature it. It proposes that the legislature, in 1855, or 1856, shall submit a system of districts to the people, based upon legal voters; and if the people adopt it, that is to be your system, and it is to supplant your system of town representation. And now, I ask gentlemen, what can be more fair, or more just? The legislature of 1854 must prepare a district system in relation to the Senate. That system will go to the people, and they will have acted upon it one year, and will have become informed in regard to its operations; and then the next legislature—that is, the legislature of 1856, elected in 1855—is to prepare a district system of representation for the House of Representatives. They are to perfect it here; and it is not to be supposed that they are to gerrymander in making this district system. We know not, Sir, what is in the future in reference to political action or political power; no man knows who is to be in authority in the Commonwealth of Massachusetts in 1856; but the legislature, coming fresh from the people, and representing the wishes of the people, will prepare a district system of representation for the House of Representatives, and submit it to the people; and the whole people are to pass upon it; and if they adopt that system it supplants your system of town representation throughout Massachusetts.

Now, Sir, all this talk among gentlemen, of our "fearing to trust the people," sounds well enough, but, let me ask, is there any foundation for it? Is there, anywhere, any evidence that the men who support the proposition of the gentleman from Natick, do, in the least, fear to trust the people in this matter? So far from that being the case, we make it imperative for the legislature to submit a district system to the people, so that they may have a fair opportunity, after reasonable deliberation, of saying whether they will adopt it, or adhere to their old system of town representation. It is not left, like some other matters, either to the will or the discretion of the legislature, but is imperative upon them, if this Constitution is adopted by the people. They must submit it to their determination; there is no alternative. If a majority of the voters of the State adopt the system, then it is, unequivocally, your system for the future. Is there any distrust here? I must confess that I favor the town system; and I favor it honestly, because I honestly believe that the people of Massachusetts prefer that system to any other. Other gentlemen, however, imagine that I am mistaken, and contend that the people prefer the district system. To those gentlemen I now reply: "Prepare your district system, and send it out to the people, and let them vote upon it, man for man, and head for head, as one gentleman said in an early stage of the consideration of this subject; and, if the voice of the majority is in favor of such system, why, in all conscience, let them have it." Is that not fair? Why, then, do we hear all this talk about "doubting the people" and "fearing to trust the people?" The proposition made here is perfectly fair. As I have already stated, it is unquestionably a settled point by the Convention, that the town system is to go before the people first. No one can expect anything else from the various expressions of opinion we have had here, as well as the votes we have taken. We have had the yeas and nays upon it half a dozen times, and it is now too late, in almost the last hour of the session, to expect that any other course of action will be pursued by this body.

Sir, I shall support the amendment of the gentleman from Natick. It is due to him, and it is also due to myself, to say, that I had no hand in maturing it; I only know it as I have heard it read; but it strikes me, as an honest man, that if we wish to get the opinion of the people, fairly, and honestly, and legally, on the matter of town or district representation, it will be upon this proposition. If there be any evil in a large House of Representatives, the people will have seen the evil, and can then set themselves to work to remedy it. They will have witnessed the action of the new Constitution with a numerous House of Representatives, and, whatever of evil there is in the system, will by that time, have been discovered; and, if it is thought best, your district system can then be tried. I trust, however, that at this late hour, after the repeated decisions of the Convention which have been had upon this

matter, that gentlemen will not change their votes, to vote in favor of the proposition of the gentleman from Taunton, but that they will adopt the system proposed by the gentleman from Natick. I do not know whether the people will accept it or not; but I earnestly hope, if any such plan is to be tried, that that may be the plan. At all events, that is the plan which shall have my support.

Mr. GARDNER, of Seekonk. On an early day of the session, I submitted a proposition in regard to the basis of representation, identical, in some respects, to the one which has been adopted; and I flatter myself, Mr. President, that had the Convention adopted my proposition, it would have been more acceptable to the people of the Commonwealth than that which we have now embodied in the Constitution. Nevertheless, I very cordially yielded my support to the proposition of the gentleman from Lowell, (Mr. Butler,) in the Convention, and I shall support it elsewhere. I am not of opinion, Sir, that the people of the Commonwealth are yet prepared for the district system; notwithstanding, I think the day will soon come when that system will be adopted. And, farther, although I regard the plan we have adopted, as being undoubtedly imperfect, and believe that it would be impossible for the Convention to adopt a system which would not involve imperfections in it, still I shall support the plan we have now decided upon; at the same time, I must say that I think it nothing more than right and fair, that the people of the Commonwealth should have an alternate system presented to them.

There are many difficulties which surround this question. It will be attended with difficulties, if presented to the people. I can see no valid reason why the proposition of the gentleman from Taunton should not be submitted to the people, and their action had thereon. Therefore, I shall cordially give my support to the proposition presented by the learned gentleman from Taunton, which town, I have the honor, in part, to represent. But should that proposition fail to command a majority of the votes of this Convention, I shall then as cordially give my support to the proposition offered by the gentleman from Natick, although I do not see that question precisely in the same light as some others do. Nevertheless, I hope the Convention will not continue the debate upon this subject any longer, but that the question will be taken, in order that the Convention may be brought to a close the present week. I hope, also, that the proposition of the gentleman from Taunton will be adopted.

Mr. BANKS, of Waltham. I desire to say but a word or two upon this question. I have favored, as well as I was able, the system of representation adopted by this Convention, and have but little doubt that the proposition will be adopted by the people. I stand upon this ground—that, upon the theory of our government, the towns have an absolute right of representation, and that that right is, in some degree, coextensive with their existence, as part of the government, and necessary to the maintenance of their full powers. Therefore, I have no hesitation whatever, in regard to the plan accepted by the Convention, nor do I suppose that, by pursuing the course indicated by the gentleman from Taunton, (Mr. Morton,) or that of the gentleman from Natick, (Mr. Wilson,) we depart from it. But the principle of town representation may be abandoned, by the people of the Commonwealth. I think, in time, it will be abandoned, for we are constantly departing from our old customs, and adopting new. What we want to ascertain at the present time is, what is the will of the people in regard to this question of representation; not only what is politic and just, and right, but what is the will of the people; for, after all, that is the power which controls us. There is no rampart in any Constitution which we can form, that will stand against that power. We cannot protect ourselves by any provision in this instrument. Therefore, at the same time that I stand upon the proposition of the Convention, I am willing to submit a proposition to the people, in alternate terms, that they may judge which of the two plans they prefer. But I confess I have a preference in regard to the manner of this submission. I would gladly assent to the proposition the gentleman from Taunton introduced, and which is now before the Convention, but that I see in the resolve, what seems to me, two defects; first, as to the manner of submission; and second, as to the time of submission; either of which, I judge, would preclude a fair consideration and determination of the question.

Let me call the attention of the gentleman from Taunton to this fact, that the plan of representation which he proposes is indefinite in its character, is ideal, and not in a distinct form; therefore, when the question of district representation is placed before the people, every man prefigures for himself such a representation as he would prefer, and every town gives its vote for just such an ideal system as that town might prefer. So far, it is very well. But we do not present the question of town representation in the same way. If the gentleman from Taunton would present the question of the district system in this form, "will you agree to a district system for a

House of Representatives of not less than two hundred and sixty, and not more than three hundred and twenty members, or will you agree to a system of town representation," that would be an equal presentation of the two systems, and it would be understood. But that is not the question. The question of the district system is indefinite, and it may assume any form of beauty in which interest or imagination may clothe it. But the question as to town representation, presented at the same time, if the proposition of the gentleman from Taunton be adopted, is not thus indefinite. In every part, its proportions and character are rigidly and unalterably defined. The question is, shall the system of representation by towns stand, "*in the form accepted by this Convention?*" It seems to me that it does not present the two questions upon the same ground. Nor can they be determined by the people at the same time, with any degree of consideration and justice. I object, therefore, to the manner of presentation. Either the questions should be distinct and definite, and the towns should know with what other towns they are to act and vote, or else the system of town representation should stand separate and independent of its embarrassing details. So far I object to the manner of presentation.

Then, in regard to the question of time. The time appointed for the submission of this proposition is unfortunate. It goes out to the people with a system of representation to which we have agreed —whether well or ill, gentlemen have different opinions. The question of the district system goes out at the same time, upon which there is the same division of opinion. There are three questions to be presented. First, shall the existing system stand? second, will you agree to the system of representation by towns, as adopted by this Convention? or shall the district system be established?

Now, as has been said, the friends of the district system will vote against the representation of towns, as accepted by this Convention, and the friends of representation of towns, as accepted by this Convention, will vote against the district system. So far, it is well, but both of those interests will be likely to form a rampart to secure themselves against the success of the objectionable plan, by voting against any change whatever. Such will be a probable result, at least. It seems to me if these two difficulties could be obviated by the gentleman from Taunton, his proposition should receive a general concurrence on the part of the Convention.

As to the proposition of the gentleman from Natick, I have not a clear conception, but my idea is this: it postpones the presentation of the question to the people until the year 1856. So far, then, as my objection to the time of presentation is concerned, that is removed. In the second place, it instructs the legislature of that year, peremptorily, to divide the Commonwealth into representative districts, and then to submit these defined and allotted districts to the people. This, I think, is right. If the people of the town I represent are called upon to vote upon the district system, the first question they will ask, is, where they are to be placed, and in what district? No answer can be given, under the proposition of the gentleman from Taunton. But under the other proposition, which proposes that the districts shall be defined by the legislature, every voter will have a perfect knowledge, so that he can determine whether he prefers the proposed system, or that which will exist, if the Constitution shall be ratified by the people. These are my grounds of objection to the plan of the gentleman from Taunton. I may have erred, somewhat, in my judgment of the proposition, but it seems to me the reasons I have given are applicable.

Mr. WILSON, of Natick. I desire to say but a single word in relation to this matter, and I will detain the Convention but a few minutes. I wish to say a word in relation to the motive which prompted me to bring this question before the Convention. I wished to do it for the purpose of giving the friends of the district system a fair opportunity, in this State, to present that question to the people. We have assented to a different system. It is in the power of the legislature, if this Constitution shall be adopted, any time between the adoption of the Constitution and the year 1873, by a two-thirds vote in the House and a majority in the Senate, approved by two successive legislatures, to submit the question to the people, whether they will have the district system or not. But, Sir, does any man believe that a House of Representatives, constituted as it will be by this Constitution, will ever submit a single proposition of that kind to the people by a two-thirds vote? Does my friend from Boston, (Mr. Schouler,) dream that the time will ever come, when a two-thirds vote of two successive legislatures, can be obtained to submit that proposition? I do not. Now, the proposition is this; it compels the legislature of 1855, to submit that question to the people, and it compels them to make the details plain. Now, my friend from Boston objects to it on the ground that they will not make fair districts. Does not he know that the Senate is based upon population, and expresses the popular will, and that no vote can be got through that branch of the legislature unless it is fair?

Mr. SCHOULER. The gentlemen who undertake to answer the views which I presented, do not seem to understand them. I say this, that the legislature presents a confused question to the people. For instance, you may take and put together a number of towns, and perhaps the Whig party will say that this will be a Democratic district if I vote for it; the Free Soil party will say it will be a Whig district; and with all those questions coming in, you never can get the people to say fairly what they want, whether they want a district system or not.

Mr. WILSON. I say to my friend from Boston, that this is a difficulty inherent in the district system, and it is a fair and legitimate question for the people to consider. I say, there is not a man on the floor of this Convention who dreams that any two successive legislatures, upon the basis which we propose to place it, will, by a two-thirds vote, ever put out a simple proposition for a district system. What do I propose in this amendment? It is that the legislature of 1855 shall be compelled, by a simple majority of the House of Representatives—nothing more—and a majority of the Senate, based as it is upon the population of the State, to make up a district system—and they will be compelled to make it a fair system—and submit it to the people.

The gentleman from Boston, (Mr. Gardner,) upon my left, referred to some remarks made by me, and wished to know if I had not confidence in the people? I say I have; and one reason why I have confidence in the people of Massachusetts is, because the people of Massachusetts do not agree with him, nor with his opinion. The gentleman from Boston refers to the intelligence of the people of the Commonwealth, out of Natick. Sir, I tell him that no man in this Commonwealth is verdant enough, unless it be the chairman of the Whig Ward and County Committee in the city of Boston, to suppose that the legislature of Massachusetts will ever agree to put out a proposition for an amendment of the Constitution, without going into details. Now, I submit that there is nothing in this proposition which is not fair, liberal, and honest; and which, if adopted, will give the friends of the district system all they ever expect to gain, or all they can ever ask, and that is a fair opportunity to obtain the public sentiment of the State. With that view I have made it.

I think I shall not present it to have a vote taken upon it, until a vote has been taken upon the proposition of the gentleman from Taunton; and if that be voted down, I shall move a reconsideration, for the purpose of putting this amendment into it.

Mr. HASKELL, of Ipswich. I shall trouble the Convention but for a moment, upon the remarks of the gentleman from Natick, that this proposition is a very fair one to the friends of the district system. I do not view it in any such light; and I ask the attention of the Convention while I go on to consider it upon the very ground upon which the gentleman from Natick has stated it. He proposes that the Convention shall adopt, as a part of the Constitution, a provision which requires that the legislature in 1855, and every tenth year thereafter, shall submit to the people a proposition whether they will have a district system, they having first adopted the system proposed by this Convention. He says, it is a fair proposition to require of the legislature a division of the Commonwealth into districts; a legislature, two-thirds of which, the gentleman himself says, two or three times over, we could never get to agree. Is it fair to the friends of the district system, to put them into the hands of a legislature prejudged against the system? Are they to frame a system against their will and choice? Yet this is what the gentleman from Natick claims to be a fair opportunity for the friends of the district system to get the system based upon equal population.

But that is not the only objection to it. There is a great deal that underlies all this, more than I can have time to express to the Convention in the short time allotted to me. He says the time is fair. Is it so? When the whole matter is considered by the people of the Commonwealth, and they are called upon to vote upon the Constitution, is not that the proper time, the fair time, to submit both propositions? I claim that it is, and that it is the fairest time. But, gentlemen, why does he put it off until 1855? Because that is valuation year, and then every small town will be represented here. This apportionment of the State into representative districts is to be done valuation year, when every small town, however small, has a voice equal to a town of four thousand inhabitants. Then is the time when the legislature, by a constitutional enactment, and against their will, are to prepare a district system, and submit it to the people. Will the Convention for one moment believe that the legislature will not be actuated by the same considerations which actuate men in other conditions of life? Will they not seek to avoid a fair expression of opinion upon the part of the people in framing that system? They may frame it very honestly upon its face, but whether one party or the other is in power at the time, they will be very likely to frame it with some reference to the interest of party.

Sir, there are gentlemen here who, very differently from what I expected, have come forward

as the peculiar friends of the district system. We have not asked it of them. We do not thank them for their favors. It is very cool indeed for gentlemen who have opposed the district system during the whole session, now to come over and pretend to be its friends, and offer to give the people an opportunity to adopt it in two or three years. Yet they put it in such a shape that they think the people will be sure to vote against it. The gentleman from Natick knows the people would reject such a system, and yet he asks the friends of a district system to come forward and vote to require the legislature to submit a district system which they know will be rejected. The gentleman asks us to father the bastard—if I may be allowed the expression—of his own begetting. But, Sir, I do not believe that a single person in the Commonwealth will be gulled into the belief that in voting for such a proposition as the gentleman from Natick proposes, they are voting for a district system.

If a district system is to be submitted to the people, I want it to be submitted next November, or whenever the Constitution is to be submitted to the people. Then is the proper time for the submission of an alternative proposition, and I am willing and anxious to support a proposition for submitting a fair alternative to the people at that time.

Now, Sir, why is it that gentlemen propose to submit such a proposition in the course of two or three years? We have not asked it of them. I do not believe there is a man in favor of a district system who would vote for such a proposition. The gentleman from Natick stated a significant fact in connection with this matter. He fears that with all the beneficial reforms, some of which I should like to see carried into effect, the people will not adopt the Constitution, and this is thrown in for the purpose of obtaining votes in its favor. Sir, I do not believe the votes of the people are to be obtained by any such manœuvring.

Mr. WILSON, of Natick, (interrupting). I hope the gentleman from Ipswich, (Mr. Haskell,) does not mean to say that I expressed the idea or the sentiment that there was any danger of defeating the whole doings of this Convention. I intimated no such thing. I never entertained a doubt that the labors of the Convention would be accepted by the people.

Mr. HASKELL. The gentleman said that with this proposition incorporated into the Constitution, they could carry the State. And suppose his proposition is not incorporated into the Constitution; what is the inference? Why, that he apprehended they could not carry the State. That is the only fair inference.

Now, Sir, I ask, what advantage can there be in the proposition proposed by the gentleman from Natick? I submit that it is granting no more than we have already provided for. We have already provided a means by which the proposition of the gentleman from Taunton may be submitted to the people, perhaps in less time than the gentleman from Natick proposes to have his plan submitted. We have given the legislature the power to submit amendments to the Constitution at any time to the people, and they may submit the proposition of the gentleman from Taunton—which is a general district system. They may submit that proposition at the very next session, if they choose, and thus we should get the sense of the people upon that system quicker than we should upon the proposition the gentleman from Natick proposes. The gentleman from Natick knows very well that his proposition would not get the votes of the friends of the district system, and if it is submitted to and rejected by the people, he knows that it will be easier to defeat a clean proposition, like that offered by the gentleman from Taunton, afterwards.

But there is another thing to which the gentleman for Wilbraham, (Mr. Hallett,) alluded. He talked of the departure from the principle of town and corporate rights. Why, Sir, if there ever was such a principle, you have given it up long ago. If there ever was such a principle, you departed from it when you provided that those sixty-four towns, containing less than one thousand inhabitants, should be deprived of an annual representative. How can the principle of corporate rights be maintained while those sixty-four towns are deprived of their rights according to that principle? Sir, I hope the friends of the district system will not accept the boon presented at the hands of their enemies, and presented for the purpose of obtaining their support to this Constitution. As far as I am concerned, I have not committed myself at all in relation to that subject. For the last ten days I have stood non-committal as to the matter of my final support to this Constitution. I have determined that I would keep myself aloof from all compromises, and wait the progress of events. I should be glad to see the Constitution perfected in a manner that would commend it to my judgment, and which would command my support. But I must confess that the proposition proffered by the gentleman from Natick, does not, by any manner of means, make up for the unjust system of representation which the Convention have adopted.

Mr. HATHAWAY, of Freetown. I have endeavored a number of times to get the floor, for the purpose of saying something upon this sub-

ject. I did not intend, however, when this proposition was introduced, to have said a single word in relation to it, and I should not have felt called on to do so now, but for the strangeness of the course which it seems to me has been pursued. But, I cannot allow to pass unnoticed some of the arguments which have been presented here, and I regret that I shall not have time in the fifteen minutes allowed me, to answer half the objections which have been raised against the proposition of the gentleman from Taunton, as they should be answered. The honorable President of this Convention, (Mr. Banks,) objects to the time and manner of its being presented, and speaks of the corporate rights of towns. Let me ask that gentleman whether that whole matter has not been given up by those who claim not only to be the friends, but the exclusive friends of the towns? Is not the whole proposition, the whole principle in the matter given up? Have not they yielded it? What has become of the vested rights of the towns of which the gentleman for Wilbraham has talked so much? Where are the vested rights of your cities? You have provided that one-third the population of the whole Commonwealth shall be placed in districts. I repeat it, Sir, where are the vested rights of your large towns and cities? If these rights the gentleman speaks of are vested rights, what is to become of the city of Boston and her rights? But is this doctrine of vested rights true? Sir, just analyze this proposition for a moment. See how your towns are formed. Where do they get their charters from, but from a mere act of the legislature? The legislature time and again has cut and carved the towns of the Commonwealth ever since those towns have had an existence. Aye, Sir, and the gentleman from Taunton told us the other day how the legislature at one time took it into their heads, in their wisdom, to abolish a town altogether. Where were the vested rights of that town then? Sir, there is nothing in this doctrine, as it seems to me.

The honorable President of the Convention speaks of the beautiful form and consistency of the proposition adopted by the Convention in reference to this matter. Now I want to know wherein it consists? Is it because it provides for districting one-third the population of the Commonwealth? Surely, the gentleman would not say, take the proposition and go it in the dark so far as that one-third of the population is concerned, for the sake of accommodating the small towns. Will he contend that the small towns have vested rights and that the large ones have not?

But, Sir, this argument of vested rights was well answered by my friend over the way from Cambridge, (Mr. Sargent). Where are the vested rights of the counties? Your counties have had a corporate existence ever since 1780, and long before that, they elected their magistrates, yet how are their vested rights regarded? They are not respected in the election of senators. You can trace these vested rights of the counties—if there are such vested rights of corporations—back almost to the settlement of the country. Where are your beautiful forms which you are to present to your constituency and to the country in this respect? Where is that beauty of form which the honorable President argued you were going to present to the people of the Commonwealth for them to pass upon? I cannot find it. Let me say to the honorable President that long, long before one-half the towns of the Commonwealth were in existence, the counties of the Commonwealth were known and were incorporated, and hence, when you come to talk about vested rights, you must look to the vested rights of the counties as well as to those of the towns.

Sir, this whole matter is founded upon a false theory. The premises are not sound, and hence the reasoning in relation to the whole matter, however ingenious it may be, falls to the ground.

But I must hasten on with my argument. The majority of the Convention not only give up the principle of corporate rights as far as the cities are concerned, but they even provide that the small towns may be districted. Let me say, as I said before, the principle of corporate representation is gone, and that of districting, is plainly acknowledged. Now, Sir, I desire to give the gentleman from Plymouth, (Mr. Davis,) and the gentleman for Montague, (Mr. Alvord,) a little attention as I pass along. I confess it comes a little ungraciously from that quarter to throw back upon us the responsibility of adopting the system you have adopted in reference to senatorial districts. Sir, I thought there was something strange about that matter when it was before us. I recollect very well the position I assumed, and the position occupied by the gentleman from Plymouth, and I will venture to say the same position was occupied by the gentleman for Montague, though I cannot speak with certainty. But now they turn round and throw upon us the responsibility of what they themselves have done.

The gentlemen who went in favor of districting your Commonwealth and having your representation based upon population, now turn around and throw it in our faces, and say: "You have based your Senate upon population, and now comes the town system." Sir, I was opposed to

that. The gentleman from Salem, the other day, said to them: "Go back to your basis of legal voters—you are welcome to it, and we will go with you." I was opposed to having the Senate based upon population, and now they turn around and throw it in my face, and say: "You have got a great deal more than you deserved; the county of Suffolk has got a deal more when based upon population, than she would have if the basis was fixed upon legal voters." This is the very ground that they put it on. The gentleman from Plymouth went with them, and I thought then that there was something singular and strange about it, for I laid my eye upon Plymouth, although I do not live in that county, for she was part and parcel of the Old Colony. I confess I had some sympathy for her; and the gentleman said that he had been rebuked by his constitutents. Sir, I think he deserved rebuke; for, after all, sift it and turn it as you please, what does it amount to but a bargain? The gentleman says that it was expressly understood—I take his own language—it was expressly understood that he should go in favor of municipal corporations, and that representation in the House should be by towns, and that is the reason why he went for it. That explains the reason why we who were governed by principle rather than by expediency, were deserted. Now, I say, it is unjust, after gentlemen have told us what controlled their minds in the matter, to turn around and say to us, now: "Although you were opposed to this system of representation, based upon population, you must take it, because those persons who were friends of town representation made an express understanding with us that if the representation in the Senate should be based upon population, we should go for representation based upon municipalities in the House of Representatives." I say it is unjust.

Mr. DAVIS, of Plymouth. I rise, Mr. President, to correct a misapprehension upon the part of the gentleman with regard to the motives by which many persons were governed in giving their votes upon this matter. They voted for the basis of the Senate, founded upon population, because they were led to suppose that the basis of the House would be founded upon legal voters.

Mr. HATHAWAY. I understood the gentleman expressly to say, that he voted for the basis of representation founded upon population—I am speaking only of what he said, for I do not know what other gentlemen said—that he voted for this basis of representation in the Senate, with the express understanding that town representation was to be preserved. That was his language, for I took it down at the time. Has the gentleman fulfilled his agreement with the people? Where are your cities and great towns? Are they not districted? Has his agreement been carried out? It seems to me that he has "kept the word of promise to the ear, but broke it to the hope."

[Here the hammer fell.]

On motion by Mr. FAY, of Southborough, the Special Assignment was then laid on the table.

*Leave of Absence.*

Mr. FAY, of Southborough, from the Committee on Leave of Absence, submitted a report, recommending that leave of absence be granted to the following members, for the remainder of the session:—

Messrs. Marble, of Charlton; Hoyt, of Deerfield; Knowlton, of Holden; Warner, of Stockbridge; Marcy, of Greenwich; Atwood, of Eastham; Cady, of Monson; Tilton, of Chilmark; Allen, of Brimfield; Swain, of Nantucket; Easton, of Nantucket; Turner, of South Hadley; and Hapgood, of Athol.

The Report having been read, the question was stated on its acceptance.

Mr. GRISWOLD, for Erving. Mr. President: There are a great many names there. I do not know but that there may be a sufficient reason for adopting the Report; but really, unless it is on account of sickness, it seems to me that this leave ought not to be granted at this late period of the session.

Mr. FAY. I will state that five on the list are either sick themselves or have sickness in their families, which renders it necessary that they should be absent; and with regard to some of the others, their business is very pressing, so that it would be a great hardship to refuse them. The Committee have examined the cases thoroughly; and, although they were desirous not to excuse any one, they have thought it proper to submit this Report, and recommend its adoption.

The question being taken, the Report was accepted.

On motion by Mr. HATHAWAY, the Convention then adjourned.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M.

*Termination of Debate.*

On motion by Mr. BROWN, of Medway, it was ordered, that debate on the resolve on the mode of submitting the question of representation to the people, cease at four o'clock this afternoon, and that the question be then taken.

*Representation.*

On motion by Mr. BUTLER, of Lowell, the Convention proceeded to consider the Orders of the Day, the special assignment being the resolve on the mode of submitting the question of representation to the people; and the question was stated upon ordering the resolve to a second reading.

Mr. BRIGGS, of Pittsfield. I suppose, Mr. President, that both propositions are virtually before the Convention. That of the gentleman from Taunton, (Mr. Morton,) and that of the gentleman from Natick, (Mr. Wilson). I shall vote in favor of the proposition of the gentleman Taunton; and I shall vote for it for the reasons which he gave, and which need not be repeated in detail. Although there have been many speeches in opposition to it, with all respect to gentlemen who have debated the question, I must be permitted to say that I do not think they have met and answered his arguments. His proposition is to submit to the people in the first place, the question whether they will retain or abolish the twelfth article of amendments to the present Constitution. If they abolish that, will they have a system of representation on the plan which has been adopted by this Convention, called the town system, or will they have a district system to be apportioned and marked out by a future Senate, basing the representation of the supposed districts upon the legal voters of the Commonwealth? Now, to my mind, nothing is more clear, nothing is more plain, nothing is more equal and just, than that proposition. Gentlemen who have spoken upon this subject, admit that it is so, upon the face of it; but they say that you cannot carry out a system of district representation that the people will accept. Sir, if the people say that they will have a district system of representation, and direct their Senate to mark out the districts upon the map of the State, it must be done, and it will be done by that Senate, in the most perfect and fair manner that it can be done, because there will be no other motive than a just one to govern them. I know that the gentleman for Wilbraham held up the terrors of gerrymandering; but I think that gentleman had better not talk about gerrymandering, for he formerly belonged to that party who more than forty years ago sealed their political death warrant for years, by that strange and monstrous measure by which the old republican party divided the State for the choice of Senators. Sir, in all future time the sword of Damocles will hang over their heads, glittering with alarm and terror to any political legislature that shall dare to imitate that bad example. This is the question then for the people of Massachusetts to decide: Will you have a system of district representation, based upon legal voters, and that system to be marked out by your representatives? That is the question, nothing more nor less; and why shall we not submit this question? The gentleman from Lowell says—and he always speaks what he means, and I respect him for it—he says that you must not submit this question to the people, because it is so delusive; it has an exterior of fairness and justice which he says cannot be be carried out, and having such an appearance of fairness and justice, he is afraid that the people will be deluded into its adoption. Sir, mark that. I hope the people will hear that. It is not then to be submitted to the peop'e, because they may be deluded by it. Sir, if there is anything fair, honest, and reasonable, in any proposition, it seems to me that this proposition bears those marks. How is it with the proposition of my friend from Natick? He showed it to me yesterday; and I cast my eyes over it hastily, and said that I did not see any objection in it, except as to the time when it should go into operation. But, during the debate this morning, while several of those with whom I generally act, expressed their opposition to it, my mind was balancing. Indeed, I had about made up my mind, if the question was put, to vote for it, until I heard the gentleman from Lowell, and I thank him for his speech. I always listen to that gentleman with pleasure, for if I do not agree with him, he speaks in a bold and fearless manner that commands my attention. He calls things by their proper names—he plants himself upon his proposition, and defies his enemies; and that is the way I like to hear a question argued. He is an adversary who does not lie in ambush, though he is sometimes rather rough. He acts openly. He uses the Damascus blade, the cleaver, or the war-club, as best suits his purpose. He told us, in the first place, that all the strength which God had given him should be devoted to the preservation of town representation. He told us, also, that he should vote for the proposition of my friend from Natick; and why? Because he knew that any proposition which might be marked out on the map by a future legislature, would not be accepted by the people. And how does he know that? I will tell you how he knows it. Before the legislature are required to make a law to carry out this provision, the system of representation which the majority of this Convention—chosen by a minority of the people—have adopted, is to go into operation; that system of town representation which chooses a majority of the House of Representatives by a minority of the people, is to

prevail in this House in 1855, when the district system is to be marked out upon the map of the State. Now, Sir, look at the small towns upon this floor, and look at the votes upon this floor for the respective systems of town and district representation. Sir, I respect the gentlemen from these small towns; they have stood up here like brave men, and they have defended their little citadels to the death. Now, if you have a House thus constituted—four hundred and thirty-five strong—to lay out districts upon the map of Massachusetts, to see whether a majority of the people would accept it, do you believe that after standing up here and defending themselves so manfully, they would then lay their heads upon the political block, and suffer their cherished town representation to be blotted out forever? No, Sir! Men do not gather grapes of thorns, or figs of thistles; and a House of Representatives based upon town representation, will never agree to a proposition and submit it to the people, that they believe the people will accept, to disfranchise themselves. Can you expect it of them as men?

But, is said that the Senate is based upon population. So it is. But can the Senate district the State? Suppose the Senate send a district system into the House of Representatives—such a one as would be acceptable to the people—do you think that in a body composed of representatives of the town corporations, a majority would be found who would accept of a plan that would take their seats from under them, and deprive them of their representation? No, Sir! Let me say a word here to my friends from the small towns, who appear from indications now quite manifest, to be willing to vote for the proposition of the gentleman from Natick. Where is my friend from Wilmington, who so valiantly stood up here and defended the small towns? I would like to ask him, and I wish to ask the other gentlemen from the small towns, have you not heard it said in some quarters—has it not been whispered in your ears, that you may vote for this proposition, because you will have the staff in your own hands when the State comes to be districted? And that whilst you vote for it you are perfectly safe.

But, what reason is there why you will not vote for the proposition of the gentleman from Taunton? Is it not because you believe, with the gentleman from Lowell, that it is so plausible and delusive that the people may be deluded into accepting it? But, I put it to your candor, when you change your votes and go for the district proposition, is it not upon the ground that you are perfectly safe in your towns? And, why are you safe? Because, upon the declaration of the gentleman from Lowell, no system of district representation will be submitted to the people but what they will reject. But, is that dealing fairly with the people? "Is this thy kindness to thy friend?" Do you propose to compromise matters with town representation in that way, by sending out to the people a proposition which you believe, from the bottom of your hearts, never will be accepted by them, and you vote for it only because you believe that they will not accept it—or in the language of the gentleman from Lowell, a proposition which you *know* they will not accept—while you keep back a proposition which you fear they would accept, but which, if they did, would deprive your town of its representation? The gentleman for Erving, (Mr. Griswold,) says he shall vote for this proposition, because he has such confidence in the people, that he does not believe they will accept it. I believe, Mr. President, that I have not mistated or misrepresented anything or anybody; I certainly would not do it; and therefore having stated my views upon this question, as they have presented themselves to my mind, and having neither voice nor strength to go into the subject more elaborately, I leave this question to the fair and candid consideration of the Convention.

Mr. UPTON, of Boston. I do not propose to go into any extended discussion upon this question; but there are one or two views in relation to it, which I think have not been submitted. The question before this body is, will this Convention send out an alternative proposition to the people of this Commonwealth? I do not propose to go into a discussion as to who constitutes the people; but I stand upon the ground that I am ready to vote for any proposition in this Convention, which shall put two questions to the people of this Commonwealth, in order to ascertain precisely what their views are upon the question of representation. I am in favor of one of two propositions. I am in favor, if the proposition is to go to the people, of having both propositions go together. If this Convention see fit to send them to the people at this time, very well; or if they see fit to delay sending any proposition until 1855, I say very well—let the representation stand upon its present basis until 1855, and then send out to the people of this Commonwealth two alternative propositions: "Gentlemen, people of the Commonwealth, do you prefer a district system of not less than two hundred and forty members for your House of Representatives, and not to exceed three hundred and fifty members, or do you prefer a system of town representation upon that same basis of numbers?" I am ready to submit these questions

to the people, because I believe that the proposition which you are about to submit, will take away from the people, and prevent their rightful expression of opinion upon the subject.

Now, Sir, there is another form in which I should like to have it sent out. It would suit me a little better, if the gentleman from Taunton would amend his motion, by striking out the word "Senate" in the last paragraph, and substituting the word "Legislature," so that it would read as follows:—

The Legislature, at its first session after the ratification of this amendment, and at its first session after each decennial census, shall divide each County into such Representative Districts, composed of contiguous territory, as they may deem expedient, so that the basis of each Representative shall be the same number of legal voters, as nearly as possible, without the division of towns or the wards of cities: *provided*, that no District shall be so large as to entitle it to more than three Representatives; and provided that Nantucket and Dukes County, shall each form one District, and be entitled to at least one Representative.

If the amendment of the gentleman from Taunton, is adopted by the people, the small towns in the Commonwealth will have the power, in 1854, to present the district question to the people, and they may present it in any form they please. I repeat, take the proposition of the gentleman from Taunton, with the modification which I have suggested, and, as all the towns will be represented in the legislature, let the people take the question upon the two propositions; first, the present basis, as proposed by your Convention; and, second, the district basis, to be framed by the legislature, upon the proposition of the gentleman from Taunton. I am ready to meet the question upon this principle. I say that either of these two propositions would be a fair proposition to send to the people. I do not propose to argue this subject. I merely desire to make a statement, in order that it may go upon record, as the view of one of the minority in this Convention, of an individual who desires the prosperity of the good old Commonwealth of Massachusetts, and that it shall not be, hereafter, racked by internal dissensions upon this question of the basis of representation. I can tell those gentlemen who represent the small towns upon this floor, that however they may talk about it, if, as has been foreshadowed by certain members of this House, the great Democratic party is to be in the ascendant, then I tell them, that their only security is, to have the party to which I belong, and which is now in the minority in this Convention, represented in the various cities and towns in this Commonwealth, by a majority in the legislature. Let me tell gentlemen who represent the small towns upon this floor, that once let rampant democracy be triumphant in Boston and the great cities, and the basis of representation would not stand one hour, which you now submit to the people.

There is another question which has been alluded to, in the course of this discussion, and that is, the question of vested rights. In relation to that matter, I have done what lies in my power, to preserve town representation, as far as, under existing circumstances, it could be preserved in this Commonwealth. The gentleman for Wilbraham proposes the question of "*vested rights*," and how stands that question in this Convention? We have tried, over and over again, to put it into your Constitution, that this question of vested rights, so far as the towns were concerned, should remain intact—that is, that these towns should not be cut up. How has this question been met by the majority of this Convention? You have denied that right. You have said that it shall not go into your fundamental law. Is this the way you respect vested rights, to divide eighty-five towns in this Commonwealth, so as to increase their representation by eighty-five, upon this floor? And then you talk about vested rights! Sir, it is but a mockery and a dream. There is one question in relation to vested rights, that I should like to ask the gentleman for Wilbraham: If all the people of the Commonwealth should gather, *en masse*, and they should say how their representation should be based, what principle would there be in the vested right of town corporations? If I understood the proposition which the gentleman for Wilbraham made, to amend the Constitution in regard to future Conventions, the whole theory of vested rights, so far as the towns are concerned, was completely brushed away. There is no such thing as vested rights now, except in theory. The gentleman put forth, in that proposition, that the people of this Commonwealth—not the town corporations, but the people—had the right not only to change their Constitution, but to change the whole basis of representation. Now I desire, and should be most happy to give my vote for any proposition which would submit to the people the questions which I have named, which I hold to be the only true questions: Will the people of this Commonwealth sustain the present basis of representation—or any basis, I care not what it is—any basis of representation which the legislature may submit to them, fixing the limit of the House of Representatives? Be it borne in mind, this is a pretty important question. When the honorable

President addressed the Convention this morning, he said that it was not a fair question to submit to the people, and I agree with him, to submit to the people the question, whether they will have a House of Representatives of four hundred and forty members, as it now is, or a House of Representatives to be districted by the legislature in 1856—of two hundred and sixty-one members. I want the people to pass upon the proposition in a different form, and I am ready to submit the question to them, stating the maximum as well as the minimum of the number of members: "How shall those representatives be chosen? Shall they be chosen by districts, or shall they be chosen by towns, as they are now chosen?" I say that is the fair question to submit to the people, and it presents the whole question. I should say, in this connection, in regard to the district system, as I have once before remarked, that the minority here represent the majority of the people of the Commonwealth upon this subject. I hope the gentleman from Taunton will modify his motion as I have suggested. I am perfectly ready, and prefer, if the people adopt the alternative proposition of the gentleman from Taunton, to let this question go to the legislature instead of the Senate. I stand here upon this floor as a friend, so far as I can be, to the towns, and I am ready, so far as the basis is concerned, that the present town corporations, represented in the House, should have a full voice in saying precisely how the question of districting should be carried out.

Mr. GRISWOLD, for Erving. I believe that my position upon the subject of representation is pretty well understood by this body; but a new proposition has now been laid before them, and I am not a little surprised at the manner in which this proposition has been assailed from certain quarters. It is proposed, by my friend from Natick, as I understand it, after the present Constitution which we propose to submit to the people has gone into effect, and its practical operations have been observed and experienced; it is proposed by the advocates of the system of the gentleman from Natick, then to submit to the people of the Commonwealth the question, whether they prefer, to the system which we propose to put forth, and which they will have had an opportunity to examine, a district system; not, Sir, in the abstract; not in every imaginary shape in which it may be conjured up by this man, and by that man; but in detail, precisely as it is to go into operation, so that every voter in this Commonwealth may know where it will cut, and what the districts will be.

Now, Sir, I think I should not have started this proposition myself; in fact, at first, I had some doubt about it; but as the discussion has progressed, I am free to say, that my doubts one after another have vanished; and why? I apprehend that, if the two propositions could be properly put to the people of this Commonwealth, and be properly understood in their practical operations in detail, a large majority would be in favor of town representation. Well, Sir, we go forth to them with a system of town representation somewhat decimated, but as perfect as we could get it, which we think is substantially correct, and with it we put forth another proposition; and the people of the Commonwealth will have an opportunity, if they adopt this system, to see its operation. It is said that the House will be too large—they can try it. It is said to be unequal in its representation of different portions of the Commonwealth—they will have an opportunity to test that matter. In short, they will have an opportunity, if this system which we put forth is adopted, to see how they like it, and how it operates. Now, I say, as a friend of town representation, that after that system has been put into operation, and has been tested by the people of the Commonwealth, if gentlemen will then come forward with a district system carried out into detail so that we can see precisely how it is to operate in every town and city in the Commonwealth, I cannot stand up here and say that I object to putting such a proposition before the people in such a manner as that, and at such a time.

And, if the majority of the people of the Commonwealth—the question thus fairly and properly put—after the first system has been tested by practice, should say that, after all, your system of town representation in unequal, unjust, and wrong, all things considered, it is not in my mouth to find fault with that verdict; yet such is my confidence that no such system as this district system will be adopted by the people of the Commonwealth, that I have no fears whatever in regard to giving it a trial. Why, Sir, take the system proposed by the gentleman from North Brookfield, (Mr. Walker,)—and that was a pretty fair system—or the system proposed by the gentleman from Boston, (Mr. Hale,) who made the Minority Report, and I apprehend that, outside of the cities, you cannot stand for a moment upon either of these plans, because I believe that the towns generally dislike to be united in the mode, and for the purposes which these systems proposed.

But, it is farther said here, that it would be unfair for a legislature elected upon the basis we now provide, to perfect this system of represen-

tation, before it is sent out to the people. I cannot see how it can be unfair. In the first place, if it is not perfected before it goes out to the people, and the people should adopt a system which has no definite details, and which details only can be provided by the legislature, it must be obvious to every-body, that the legislature will afterwards have to perfect the system in regard to these details. And, if this must necessarily be done by the legislature, why may it not as well be done before the system is sent out, as after it is sent out? In the one case, the people would know exactly for what they were voting; in the other they would be voting blindfold.

But it is farther contended, that the House of Representatives will be unequally elected, and that they will, on that account, be very likely to send out an unequal system. Without going into that question, admitting even for a moment that it were so—this system must be passed upon by the Senate, elected in equal districts, and may be rejected by that body; or, even if concurred in by them, it may be vetoed by the governor; and you could not get a system through unless it was equal and fair—and therefore I see no objecto it so far as that matter is concerned. There is, therefore, no force in that objection. Again, in the popular branch of the legislature, if the people are not represented according to population, this proposition provides that the system shall be based upon voters equally, so that it is not in the power of the legislature to form unequal districts; so that I see no force whatever in the objection upon that ground. Sir, I will go farther. The Convention will bear me witness that I have not taken up much time upon this question, and although I might now claim the privilege of answering some of the objections which have been raised to the system we have adopted, I will not do so; for I feel that this matter has been agitated to such an extent as to become almost a nausea in the nostrils of the Convention. I look upon this agitation about the inequality of the proposed town system, in the main, as humbug. I believe that the proposition before the Convention is substantially equal in its provisions; and that one part of the Commonwealth is as well represented, all things considered, as another. I do not believe that there has been a disposition on the part of any members of the Convention to give an undue proportion of representation to one part of the Commonwealth at the expense of another.

Entertaining these views, I am willing to vote for the proposition of the gentleman from Natick. I shall be unwilling to vote for that of the gentleman from Taunton, for several reasons, and among the first and foremost of them is the reason that I would not mix up and confuse this question of representation at this time. The question on this head has been elaborately discussed by others. I would not at this time put forth a mere abstract proposition, like this district system, without any details. It would be unfair, and would operate as a kind of drag-net, by which you would confuse and draw together the voters of the State, without being exactly able to discriminate themselves for what they were voting. On the other hand, if the proposition of the gentleman from Natick is given out, such is my confidence in the town system, that I have no fears of the result; and after the town system has gone into effect, and its operations have been seen, then, although a friend of town representation, I am willing that the question of a district system should be submitted to the people. If the people want it, it is not for me to say they shall not have it, although I am an advocate of the town system; and I do not see how gentlemen here who have been advocates of the district system, and who have advocated the Minority Report, the details of which have been perfected, can feel that they are acting with consistency in opposing the amendment suggested by the gentleman from Natick; as all they can now do is to submit the question of a district system to the people, and that we do by incorporating the amendment of the gentleman from Natick (Mr. Wilson) into the Constitution.

Mr. HUBBARD, of Boston. I did not intend to trouble the Convention again with any remarks in regard to any matter that might come before us for consideration, nor do I expect to influence the action of any member of this body by any argument which I may address to it. But, Sir, when I hear gentlemen advocate a measure which, in my humble judgment, is neither more nor less in its character and results than a deception—I impute no improper motives either to its author or to those who favor it—I say, when in its operation it has a tendency to mislead and deceive the people, and when those who attempt to oppose this measure are stigmatized as factious and inconsistent, I cannot sit still, without at least defending my own action in regard to this proposition. Sir, it has been said that those members of the Convention who have heretofore been found advocating the district system, are grossly inconsistent in refusing to support the proposition of the gentleman from Natick. Sir, when we see with what a death grasp the members of this body representing small towns have clung to their prerogative rights which they now enjoy, and when it is proposed to us to ask these same towns some

two or three years hence, when they are more firmly seated in power than they now are, to lessen that grasp, and to give the people an opportunity of acting upon the district system—what can any reasonable man, who is friendly to the district system, hope for or expect?

We are told that it will be imperative upon the legislature, at a given time, to submit such a system to the people. The proposition, Sir, is an absurdity. To say that a legislature consisting of two bodies so dissimilarly organized and elected, when called upon to exercise their discretion in regard to any particular measure—and to say what is fair and what is unfair, what equal and what unequal—are to be compelled to agree in regard to it, involves an absurdity which never was heard of in all parliamentary history. Suppose that the Senate of Massachusetts, in 1856, should devise and send down to the House of Representatives a fair system of district representation, what power on earth can compel that House to adopt it, unless they see fit? Or, on the other hand, let a system be originated in the House, and appear just and fair—with gerrymandering, perhaps, in all its features—and be sent to the Senate, where it is deemed unjust and outrageous, what power is there to compel the Senate to agree with the House? Sir, if you put this into your Constitution, you put that into it which it is morally impossible to carry out, with a legislature such as you will have upon the basis now proposed in your amended Constitution.

Sir, there is nothing about this proposition in the nature of a compromise. It does not give the friends of the district system the remotest chance of putting such a system before the people as will enable them to give a fair expression of opinion in favor of the district system. I shall, therefore, oppose this proposition; and, in doing so, I shall regard myself as acting with entire consistency in the vote I now give, when viewed in relation to the votes I have heretofore given when the district system was under consideration.

Mr. WILSON, of Natick. I now offer my amendment.

The amendment was read, as reported in the early part of the day.

Mr. DAVIS, of Worcester. I do not propose to trouble the Convention longer than for a few moments. I am very glad that this proposition has been offered by the gentleman from Natick, because I can vote for it with all my heart, and because I believe it to be a fair proposition to put out before the people in regard to a district system; and, in that way the people will have a fair opportunity of deciding whether they will have a district system or a town system of representation. I shall go for the amendment, and shall oppose the proposition of the gentleman from Taunton, because it does not put the question fairly to the people. I have watched this discussion closely, to see if any gentleman could make out its fairness upon this matter. I cannot conceive it to be a fair proposition; and I have not yet learned from the remarks of any gentleman here that the amendment offered by the gentleman from Natick is not entirely fair.

Another objection that has been alluded to, is that we have no authority to send out such a proposition to the people. If you turn to the third section of the charter by which we are to be governed here, you will find that authority amply and fully laid down:—

"SECT. 3. The persons so elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in May, in the year one thousand eight hundred and fifty-three; and they shall be the judges of the returns and elections of their own members, and may adjourn from time to time; and one hundred of the persons elected shall constitute a quorum for the transaction of business; and they shall proceed, as soon as may be, to organize themselves in Convention, by choosing a president and such other officers as they may deem expedient, and by establishing proper rules of proceeding; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of government of this Commonwealth, or the propriety and expediency of making any, and if any, what alterations or amendments, in the present Constitution of government of this Commonwealth. And such 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 by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly; and if not so ratified, the present Constitution shall be and remain the Constitution of government of this Commonwealth."

But that section gives us no authority to put to the people any proposition in the manner proposed by the gentleman from Taunton. As presented by the gentleman from Natick, it is perfectly proper, and, therefore, I shall vote for that amendment.

Mr. FRENCH, of New Bedford. I simply rise to occupy but a single moment in expressing my approbation of the proposition of the gentleman from Natick. I agree, in the main, with what gentlemen have said in its favor. I believe that it is fair, honorable, and equal; and although I went for the system that has been adopted by

the Convention, so far, I am perfectly willing that this system should be tried, and if it can be put to the people in the manner pointed out in that amendment, I am perfectly satisfied with it, and hope that the people will adopt it. I only wished to say that I think it is right and just, and that I trust it will be adopted by the Convention.

Mr. MORTON, of Taunton. I have been repeatedly appealed to in regard to this proposition, and am sorry to say that there is no time left me to explain this matter. We have before us two propositions in regard to this matter of representation—one providing that towns shall send members to the House of Representatives in a certain manner, and the other that they shall be sent by districts in a certain other manner. There was, I believe, a majority of eighty in favor of the town system. Those who represent the town system represent 386,000 people, while those who voted for the district system represented 421,000; and although—looking to the unequal representation here—the town system got a majority of votes in the Convention, the real majority of the people, by nearly forty thousand, were in favor of the other system.

Under these circumstances, I was anxious that the people themselves might pass upon the question.

It has been said that this proposition has been presented unfairly, and upon that point I should be glad to be heard for a few moments, because, when I drew it up, I certainly drew it up as fairly as I knew how to do so. I found it necessary to draw it up in general terms, because this Convention have adopted that identical mode for the Senate, and precisely in the same mode in relation to the elections to be made for members of the House of Representatives, by at least one-third of the people of the Commonwealth. The proposition in relation to the Senate and the cities, which you have already adopted, is just as general in its terms, and as much without details as mine; and I would ask, whether that is not the only way in which a matter of this sort can be put into the Constitution? I defy gentlemen to say, reasonably, that my proposition is unfair, or to find a Constitution anywhere in the United States, in which a matter of this sort is otherwise provided for, unless it be temporarily, because your population changes from time to time. I ask, therefore, under these circumstances, whether there is anything unfair in this? If I had drawn out a chapter of a dozen pages, there would have been an attack upon every chapter and every section. If I had my way, I would do just exactly as the President of the Convention, (Mr. Banks,) said he would do—put it to the people directly, to say whether they would have a town or a district system of representation. That was just exactly what I wanted to do, but I was obliged to pay some respect to the system the Convention had adopted. I give them all the advantage which belongs to their position. I took their system, and I may say now, I am willing to exchange, and put it all together. I felt bound to take the system as they adopted it, and then present my system as I thought it ought to be adopted into the Constitution, exactly in conformity with the precedent set me by the gentlemen on the opposite side. And, Mr. President, is this a fair mode of putting the question to the people? It has been said that it is unfair. I do not believe that gentlemen intended to impute any wrongful intention upon my part, but in its tendency, they say it is unfair. I appeal to the whole Convention, if it could be drawn up in a form more fair. Now, we are told—I will not say by a majority of this Convention, but by a voice which is as near the voice of a majority as any one voice in this House—that if this goes out in this form, the people will accept it with a "hurrah." And are we going to say that we will not submit it to the people, because we know they will adopt it with a hurrah? If the people want it, let them have it. Are they to make a Constitution, or are we to make it? I say, we are to submit it to them. And why will they give that "hurrah?" I am sorry that, in so many of our acts, in so large a number of them, we stamp upon their face distrust of the people. Why, Sir, will the people go in favor of this proposition? Gentlemen say, simply because they cannot understand it. Mr. President, the gentleman mightily misunderstands the people, if he thinks they cannot comprehend the whole of it. The gentleman thinks they yield to the control of their imagination and fancy, and build therein some beautiful district system, and when they vote, they vote for that. Sir, the people are a practical people, and they can and will understand it, and know all its operation, so that the supposition that they go for it because they do not understand it, is an impeachment of their capacity.

I wish to say a word in relation to this amendment, and I will say only a word. How does it come up? From the friends of the district system? No; it is a foundling, and an illegitimate, to the friends of the district system; and not only that, they also put it out to nurse to its enemies. I never knew before of a case where the friends of the offspring did not have the care

of it. And this is to be put out by the legislature constituted by a minority. One-third of the people elect the legislature which is to have charge of this system. I beg gentlemen to look at it. Sir, those people who are adverse to sustaining town representation, would have the power to cut up every town, and city, and ward, in the whole Commonwealth. In my system, they are restrained from dividing towns and wards. But if you have a minority body that wishes to put out a system to be rejected, they have nothing to do but to cut up one town and another, all over the Commonwealth, and put that to the people as their system. We have heard of gerrymandering, and the gentleman for Wilbraham, (Mr. Hallett,) says we have it in this system, if adopted at all. I say you cannot get along without suffering the legislature to make the districts, and all that you can do is, to guard against abuse as well as you can.

I have now only time to ask for the yeas and nays upon the amendment of the gentleman from Natick.

The yeas and nays were ordered.

The hour of four o'clock having arrived, at which time the Convention had determined to take the vote, the first question recurred upon the adoption of the resolution of Mr. Wilson, as a substitute for the resolution of Mr. Morton, and the roll being called thereon, there were—yeas, 209; nays, 138—as follows:—

YEAS.

Adams, Shubael P.
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Barrett, Marcus
Bates, Eliakim A.
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Boutwell, George S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Buck, Asahel
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Cleverly, William
Cole, Sumner
Crane, George B.
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Day, Gilman
Dean, Silas
Deming, Elijah S.
Denton, Augustus
DeWitt, Alexander
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Edwards, Elisha
Edwards, Samuel
Ely, Joseph M.
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Foster, Aaron
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gale, Luther
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Goulding, Dalton
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Haskins, William
Hayden, Isaac
Hazewell, C. C.
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hunt, Charles E.
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, Charles L.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Leland, Alden
Little, Otis
Loomis, E. Justin
Marble, William P.
Marcy, Laban
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Orne, Benjamin S.
Osgood, Charles
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Jesse
Phinney, Silvanus B.
Pool, James M.
Powers, Peter
Putnam, John A.
Rawson, Silas
Richards, Luther
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, William
Strong, Alfred L.
Sumner, Increase
Sumner, Charles
Swain, Alanson
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick, T.

Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Whitney, James S.
Williams, J. B.
Wilson, Henry
Winn, Jonathan B.
Winslow, Levi M.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Andrews, Robert
Aspinwall, William
Atwood, David C.
Ayres, Samuel
Bancroft, Alpheus
Barrows, Joseph
Bartlett, Sidney
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Jacob
Booth, William S.
Bradbury, Ebenezer
Bradford, William J. A.
Brewster, Osymn
Brinley, Francis
Briggs, George N.
Bryant, Patrick
Bullock, Rufus
Choate, Rufus
Coggin, Jacob
Cogswell, Nathaniel
Cole, Lansing J.
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Crittenden, Simeon
Crockett, George W.
Crosby, Leander
Davis, John
Davis, Solomon
Dawes, Henry L.
Denison, Hiram S.
Doane, James C.
Dorman, Moses
Eaton, Lilley
Ely, Homer
Eustis, William T.
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gilbert, Wanton C.
Giles, Joel
Gould, Robert
Goulding, Jason
Gray, John C.
Hale, Artemas
Hale, Nathan
Hammond, A. B.
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Hersey, Henry
Heywood, Levi
Hillard, George S.
Hinsdale, William
Hobart, Aaron
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jackson, Samuel
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kuhn, George H.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Livermore, Isaac
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Mixter, Samuel
Morey, George
Morton, Marcus
Noyes, Daniel
Orcutt, Nathan
Paige, James W.
Parker, Adolphus G.
Parker, Joel
Peabody, George
Perkins, Daniel A.
Perkins, Jonathan C.
Phelps, Charles
Plunkett, William C.
Pomroy, Jeremiah
Prince, F. O.
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Rice, David
Richardson, Daniel
Ring, Elkanah, Jr.
Ross, David S.
Sargent, John
Schouler, William
Sherril, John
Sleeper, John S.
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevens, Joseph L., Jr.
Stevenson, J. Thomas
Stiles, Gideon
Talbot, Thomas
Thayer, Joseph
Tileston, Edmund P.
Train, C. R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, Benjamin
Wilbur, Daniel
Wilbur, Joseph
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo
Wood, Charles C.
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Appleton, William
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Beach, Erasmus D.
Blagden, George W.
Bliss, William C.
Braman, Milton P.
Bullen, Amos H.
Bumpus, Cephas C.
Carter, Timothy W.
Clarke, Stillman
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Dana, Richard H., Jr.
Dehon, William
Eaton, Calvin D.
Fitch, Ezekiel W.
Foster, Abram
Gooch, Daniel W.
Greenleaf, Simon
Hall, Charles B.
Haskell, George
Henry, Samuel
Huntington, Asahel
Ide, Abijah M., Jr.
Jacobs, John
Kellogg, Martin R.
Kinsman, Henry W.
Knowlton, J. S. C.
Lawrence, Luther
Lincoln, Abishai
Lord, Otis P.
Marvin, Abijah P.
Marvin, Theophilus R.
Meader, Reuben
Morss, Joseph B.
Nayson, Jonathan
Newman, Charles
Norton, Alfred
Oliver, Henry K.
Packer, E. Wing
Park, John G.
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Perkins, Noah C.
Pierce, Henry
Preston, Jonathan
Richardson, Nathan
Rockwell, Julius
Sampson, George R.
Sheldon, Luther
Sherman, Charles
Storrow, Charles S.
Stutson, William
Taber, Isaac C.
Taylor, Ralph
Tower, Ephraim
Warner, Marshal
White, George
Wilkins, John H.
Wilson, Willard
Wood, William H.

Absent, and not voting, 72.

So the substitute was adopted.

The question next recurred upon ordering the resolve, as amended, to its second reading.

Mr. EARLE, of Worcester, called for the yeas and nays upon that question, but they were refused, by a vote of 35 in the affirmative, and 230 in the negative.

The question was then taken upon ordering the resolve, as amended, to a second reading, and it was decided in the affirmative—ayes, 183; noes, 90.

Mr. GRISWOLD, for Erving. I move that the

rule requiring the resolve to take its second reading to-morrow, be suspended, and that the resolve take its second reading at this time.

The question was taken, and the motion was agreed to.

The resolve was then read a second time.

The question next recurring upon the final passage of the resolve,

Mr. GARDNER, of Boston. I move to amend the resolve, by striking out "1855," and inserting "1853."

Members of this Convention will see at once the effect of that amendment, if adopted. It will obviate the objection which the gentleman from Natick makes, to having the matter put to the people in such a way that there will be confusion existing. The question will not go to the people this fall, but the legislature to be chosen this fall, under the present system of representation, will divide the State into representative and senatorial districts, and a year from this fall, the people will be called upon to vote upon the question. Now, Sir, I presume that the debates of this Convention will be spread abroad in the community, and will be discussed generally throughout the State, and before they grow stale in the public mind, I should like to have the people vote upon these two propositions, and not have it put off until after the next decennial census of the State. And why not have it now? Why not have it a year from this time? I can see no objection to it, unless this is an objection, that if the division is made next year, it will be made by a legislature elected on the present basis of representation. If it is deferred, as proposed by the resolution, it will be made by the legislature, which every-body here confesses, is elected by a miserable minority of one-third of the community. That, Sir, is the only difference—a division made by a legislature elected by one-third of the people, or a division made by a legislature constituted as it will be hereafter.

The question does not require argument, or elaboration, to make it apparent to every mind. Every individual here grasps the idea, and I am willing to leave it with the Convention to decide, whether they will accept the amendment or not.

Mr. WILSON, of Natick. Not wishing to consume the time of the Convention, I simply say, in reply to the remarks of the gentleman from Boston, (Mr. Gardner,) that the Convention have already decided to have the decennial census taken in 1855, 1865, 1875, and so on, instead of the years 1850, 1860, &c., and thus my plan comes in, in exact accordance with that.

Mr. GARDNER. If this comes in in 1855, under the decennial census, why does he make it hereafter in 1866, 1876, &c.? And if they come in in 1865, how will they get at the decennial census taken the same year?

Mr. WILSON. The census is to be taken in 1855, 1865, 1875, &c. The legislature chosen in the autumn of 1855 will put this question out to the people, and the legislature chosen in 1855, will arrange the districts, which the people will decide upon in 1856. It comes in precisely with that arrangement, and for that reason it was so arranged.

Mr. PLUNKETT, of Adams. I ask for the yeas and nays upon the amendment of the gentleman from Boston, (Mr. Gardner).

The yeas and nays were not ordered, one-fifth not voting therefor.

Mr. EARLE, of Worcester. I shall detain the Convention but for a moment, and that will be to state two reasons, and two only, why I should not be in favor of the proposed amendment. The first is, that if the districting is made according to the amendment, which will be a work of great labor, and occupy the attention of the legislature for some time, it can stand but for one year, because the census is to be taken in 1855, and the legislature elected in that year would be required to make a new apportionment under the new census. That alone, it appears to me, is a sufficient reason why the amendment should not be made.

Another reason is, that in the legislature to be elected in 1855, the whole State will be represented. While the one next elected, will not represent the whole State, because some towns have already exhausted their right to representation.

The question was then taken upon the amendment offered by Mr. Gardner, and the amendment was not agreed to.

The question again recurring upon the final passage of the resolve, as amended, was put, and decided in the affirmative—ayes, 189; noes, 82.

So the resolve was passed.

*Sectarian Schools.*

Mr. WILSON. I move that the Convention now proceed to the consideration of the Orders of the Day.

The motion was agreed to, and the Convention proceeded to the consideration of the next matter upon the Orders of the Day, which was the motion of the gentleman from Quincy, (Mr. White,) to reconsider the vote by which the resolves upon the subject of sectarian schools were passed.

Mr. BUTLER, of Lowell. I wish to say one word upon this subject, and that is, that after an examination of this matter, I can see no cause for

an alteration of the Constitution in this respect. We have met no trouble, seen no difficulty, and there has been nothing sectarian heretofore in the division of the public moneys. I hope we shall not undertake to make an amendment to the Constitution, which has not been called for from any quarter. I trust the vote will be reconsidered.

Mr. WHITE, of Quincy. The reason why I made the motion to reconsider, was, that the resolve was taken up in rather a thin House, and passed without much consideration, and without any debate. As it contains a principle unlike anything in the present Constitution, I think it should have a full consideration. I ask the yeas and nays upon the motion to reconsider.

The yeas and nays were not ordered, one-fifth of those voting, not voting in the affirmative.

The question being upon a reconsideration of the vote by which the resolve was passed, the Secretary, upon the request of Mr. Plunkett, read the resolve, as follows:—

*Resolved*, That 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.

Mr. PARKER, of Cambridge. I will detain the Convention but a moment at this time, when members appear to be so anxious to take the question. This resolve was introduced by me some days since, and it was printed for the information of the Convention. It was proposed as a substitute for the resolution reported by a committee, on account of some objection to the phraseology of that resolution, and with the view of placing this matter in such a shape that no objection could be taken to the form in which the measure was proposed. I moved on Wednesday of this week to take the documents from the table, and the adoption of this resolution as an amendment. There was, to be sure, at that time a thin House, but it was at the ordinary hour of business and after other business had been transacted. There was no springing of any surprise upon anybody, because I had previously, in the course of the forenoon, moved to lay the Orders of the Day upon the table, with the declared purpose of taking up this subject. It was known, therefore, that it was a matter before the Convention, and it might reasonably have been inferred that an attempt would be made to take it up at the earliest convenient time. It was adopted without any division, because there was hardly any opposition to it. It met with the approbation of nearly all the members of the Convention present at the time.

Now, Sir, I have heard no reason why this vote should be reconsidered, except it be the opinion of the gentleman from Lowell, (Mr. Butler,) that it is not necessary to take any action upon the subject. If that stands as a good reason for the action of the majority of this Convention, this vote will be reconsidered, of course. But unless it does, I trust that a measure so important to the welfare of this Commonwealth, as I regard this to be, will be suffered to stand as a part of the constitutional amendments to be proposed to the people.

Sir, this resolution has nothing sectarian in its character. It proposes simply to retain and secure your common schools in the condition in which they are at the present time, beyond all peradventure, come from what quarter an attempt for change may come—and I care not from what quarter it comes—and to secure them as the pride and glory of the State, the pride and glory of New England, and the foundation and support of our popular institutions. If the members of the Convention are prepared to say that they will not sustain a proposition to that effect, they will support this motion to reconsider, and strike out the resolution which has been adopted.

Mr. KEYES, for Abington. This resolution has been already adopted by the Convention. On reading it over, I find it contains a proposition that will always be held sound in Massachusetts. I trust no man, here or elsewhere, will say it is not just and proper. The inference to be drawn from it is, that we are opposed to having the public money which is raised for school purposes, applied to the support of sectarian schools. I will venture to say that every man in Massachusetts is in favor of it. If there is a man in Massachusetts who is opposed to it, he is an enemy to Massachusetts, an enemy to the school system of Massachusetts, and I presume there is no such man.

Now, Sir, there has not been a single reason given in favor of reconsideration. If there is any reason that can be given, it is some secret reason that men dare not avow. We may all have some idea what it may be. I do not believe, however, there is any foundation for the apprehension that seems to be entertained that the school money will be devoted to sectarian purposes. The people of Massachusetts are opposed to granting

public money for sectarian schools; that we all know.

Mr. BIRD, of Walpole. I submit, Sir, with all respect for the gentleman for Abington, that the burden of proof does not rest upon us to show that this ought to be reconsidered, but upon those who oppose the reconsideration to show why the provision should stand as it is, and for this reason: Gentlemen know very well that this matter has never been discussed in this House, and the reasons have never been assigned why this provision should go into the Constitution. It came before us, was laid upon the table, several attempts were made to take it from the table, and the Convention uniformly refused. It came up finally at a time when very little attention was given to it, and very little consideration. An amendment was proposed by the gentleman from Cambridge, and it was adopted, with very few words from him, nothing like an argument, by a very small vote. And the resolve was passed to a second reading, and I believe the rule was suspended, and it was passed instanter, or it may have gone over to the next day. At all events, it was passed *sub silentio*, just as it now stands, and I submit, that reasons have not yet been given why a change of this kind should be made in the Constitution.

I hope the motion will prevail, and that it will be reconsidered, even if, in the end, we do not adopt it. I want the reasons shown, that I may give the people in the narrow circle in which I move, the reasons why we should adopt this provision. I confess that, as at present advised, I cannot defend it.

I do not like the resolve. 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. I am not willing that any such inference should be drawn from our action in regard to this matter.

And there is another objection. Every-body knows this resolution appears to be aimed at one class of our citizens, one denomination of religion. Nobody has intimated any apprehension that money would be used for the benefit of Protestant sectarianism. I have never heard that question raised in the State; but the question has been raised in the State, and discussed, in relation to the support of Catholic schools; and I am not willing, as one of the friends of the Constitution, that it should be embarrassed by any such provision. It is too important a question to be passed over in this manner, without any reasons given for and against it; and impatient as we all are to finish our labors here, I hope the Convention will look seriously at this matter before they assent to its being made a part of the organic law.

Mr. HALLETT, for Wilbraham. I will only advert to one consideration, why I am opposed to touching this matter of conscience in the Constitution. I believe no man desires to establish an ecclesiastical tribunal; yet, in my judgment, this provision, in effect, does establish such a tribunal; and why? Because it declares that money raised for the support of common schools, "shall never be appropriated to any religious sect *for the exclusive* maintenance of its own schools." Now, what does that mean? What is a religious sect? What is a maintenance *exclusively* of the schools of a religious sect? Who is to determine whether the town's money has been appropriated to any religious sect, or not? Who is to say how far you may go in maintaining a sectarian school, and still not do it exclusively? Anything less than the *whole* is *not* exclusive. Therefore, you may apply your money to a sectarian school all *but*. Any exception will save it. Who shall settle this? It must be determined by some court. Therefore, your supreme court is to become, under this clause, an ecclesiastical court, to determine what is a religious sect, and what is the *exclusive* maintenance of a sectarian school. Then, how far are you to go in this matter of ecclesiastical definitions? What is the platform? It seems to me that here are difficulties of construction that you cannot aviod or surmount otherwise than by giving a new jurisdiction to the supreme court as an ecclesiastical tribunal. They are difficulties which the able gentleman who introduced this proposition, will find at the very outset, and increasing at every step.

Now, I am unwilling to incur the risk of raising a question here which is of extreme difficulty concerning religious opinions, and one which touches the conscience. What is there wrong about our public schools at present? Are they devoted to sectarian purposes? Is your money going to establish sectarian schools? Nobody asserts that such is the case; but somebody imagines that such a state of things may arise in the future; that sectarian schools are going to be established; that some new sect may outvote the Protestants, and claim the school fund. I have no fears on that score. I want free opinions, and I would no sooner give Protestants than Catholics the power to control religious opinions and sentiments. But I do not want, if I can avoid it, to put a firebrand into our town meetings, by raising

this imaginary issue, which will never come if we let it alone. You are treading upon delicate ground, when you undertake to interfere with men's consciences. What is the meaning of that proposition? We propose to declare, that no part of the money that is raised for school purposes shall be appropriated to any other purpose, except to its legitimate uses, for fear we may do something that will favor sectarianism. We contend that it is all right now, but we are afraid of something ahead. Where will it end? Your town meetings will be thrown into confusion, by contentions about the religious opinions of school teachers. Men will get together, and undertake, as in the times of Gov. Winthrop, to regulate men's consciences. It will be as difficult to settle a schoolmaster as a minister.

Have we not got past this meddling with conscience? It appears we have not entirely, for this Convention has, by refusing to amend the Bill of Rights, relating to religious opinions, solemnly declared, that a man "*shall be molested for his opinions* and sentiments concerning religion." That is bad enough. And that is far enough to go. I thought it too far: to say that in this good Commonwealth we shall undertake to interfere with any man's religious belief, and that no man shall be unmolested who is so unfortunate as conscientiously to be without any religious belief. Nevertheless, I submit to that decision here, and will patiently wait for liberal progress, in the hope that another generation will be more enlightened. But, pray, let us have no more of sectarianism in our Constitution. And let us have no interdiction, or intermeddling in opinions of this sort. I do not believe the learned gentleman who introduced this proposition, intends any such thing, as to exclude a particular religious sect from our public schools. I know him to be of a very different spirit; but I say, that is the construction I put upon it. And many others understand it in the same way, and the very doubt it raises, is reason enough to reject it. I hope, therefore, that we shall agree to the reconsideration, and then strike the provision out altogether, as one of doubtful meaning and expediency.

Mr. WOOD, of Fitchburg. My attention has just been called to this resolution, and that brings to my recollection some little question regarding this subject, which arose in my own town. We have, growing up, between three and four hundred Irish children. About one in twenty of these go to our common schools. Many of the intelligent Irish do not and will not send their children to our schools. I had a conversation with one of these, a man who desires the advancement of learning as much as I or any man in the State. I asked him why he would not send to our schools. His answer was: "I will not send my children to a sectarian school." "A sectarian school?" said I. "Heavens! I did not know that our schools were sectarian." "Well," said he, "that is just the way with you here in America, and with religionists all over the world. Our sect is no sect; every-body else is sectarian. Now," said he, "what constitutes a sectarian school? It is where you will have all the Protestant forms of worship introduced. You will insist on having prayers according to the Protestant forms. You introduce your Protestant Bibles and other Protestant books, and you will have none other. Now, I put it to you, would you be willing to send your children to be instructed by Roman Catholic priests; to be compelled to read their Bible, and have comments upon it?" I said "No." "Very well, then, you ought not to expect us to do it." Now, I put it to this Convention, how it is possible to raise any money by taxes to be expended for common schools, if it cannot be expended for either Protestant or Roman Catholic schools?

Now, let me say another thing. It is all important that our Irish children should be educated. It is as important to us as it is to the Irish themselves. We do not want them to grow up amongst us, ignorant and vicious, first to rob our hen-roosts, and afterwards to commit more serious offences. It is all important that they should be educated. If we cannot educate them in such schools as we have, let us give them such schools as they can accept. And I would appropriate money for that purpose. Their own forms are dear to them, and they will not send their children where there is danger that their minds will be perverted, if not converted. Therefore, although I want no money to be appropriated to sectarianism, I would devote a portion of the money that is designed for common school purposes, to furnish schools for them. As for compelling them to attend our schools, I would do no such thing. I would let the matter, as regards that, take its natural course; there should be no compulsion on that score. We have a sufficient sense of liberty—the Irish have themselves—to know that there should be no constraint about the matter. Formerly, it was said that they would do nothing contrary to the wishes and orders of their priests, that they believed them to be God's vicegerents on earth; but they are getting over that. So I think there need be no alarm in regard to the Roman Catholics; for I cannot help thinking that this has a strong squinting against them. We may proscribe them, put a clog upon them, attempt in

every way to render them a degraded race; but be assured they will not continue to be a degraded race in Massachusetts, or in the other States of the Union; not that I fear them; but let us treat them liberally—give them a fair chance to come and be identified with us, that their sympathies may be as ours. Pass no law, especially no fundamental law, against any sect in religion. I hope the vote will be reconsidered.

Mr. LOTHROP, of Boston. The resolution which it is proposed shall be reconsidered, was introduced by the gentleman from Cambridge, as an amendment to the Report of the Committee on the Encouragement of Literature, of which I had the honor to be a member. The attention of the Committee was called to the subject, by an order passed in Convention and referred to it. I agree, Sir, with the remark that has been made by two gentlemen, that if the subject had not been brought up at all it would have been better. Gentlemen have said we are introducing a new thought, principle, or suggestion, into the Constitution; that there is nothing in the old Constitution about it, and should not be in the new; that the matter would be left safe and well, without this resolution. Very true. There is nothing in the old Constitution relating in direct and express terms to the subject; and if the order which was the basis of this resolution had not been introduced, I should not have been in favor of making any more special provisions in regard to sectarianism in our public schools, than exist in the present Constitution. But, inasmuch as the subject has been brought before the Convention, and reported upon, and that report adopted, I believe, now, it would be impolitic and injurious, to reconsider, and strike out the resolution which has been passed. It would be equivalent to saying that we do approve of sectarian schools.

As has been stated by the gentleman from Walpole, the matter passed without much consideration, was carried rapidly through its several stages. The resolution was quietly adopted by a large vote, with scarcely a show of opposition. And, for this very reason, it seems to me that the task rests not with those who oppose, but with those who favor the reconsideration, to show reasons why it should be reconsidered. The subject having been thus brought before us, and acted upon, I believe and maintain that, in the present condition and prospects of the community, it is highly desirable that we should incorporate into the Constitution the fundamental principle laid down in the resolution, and instead of promoting sectarianism, or making it necessary to establish a board to ascertain and determine what sectarianism is, it will have the effect to suppress it. I maintain that the establishment of common schools, in which the great mass of the children of the community, of all religious denominations, are educated together, is the only way in which we can prevent and keep down the spirit of sectarianism. I ask the gentleman from Fitchburg, if he believes that his policy or plan will tend to prevent sectarianism? Sir, it is the plan which will tend, of all others, to spread sectarianism through all our families, down to the youngest children, and educate them in intense religious hatred of each other. Sir, I want all our children, the children of our Catholic and Protestant population, to be educated together in our public schools. And if gentlemen say that the resolution has a strong leaning towards the Catholics, and is intended to have special reference to them, I am not disposed to deny that it admits of such interpretation. I am ready and disposed to say to our Catholic fellow-citizens: "You may come here and meet us on the broad principles of civil and religious liberty, but if you cannot meet us upon this common ground, we do not ask you to come. It is your own choice, and if you cannot be content with the general privileges, which you share here in common with all, you have no right to complain. Here are our public schools, they are free to all the various denominations, Baptist, Methodist, Episcopalian, Congregationalist, Trinitarian, Unitarian. They are free to all, Catholic and Protestant. We all send our children to these schools, we all meet together in town meeting, and determine how much money we shall raise for this great purpose of education, thus common to all, and that money is expended in schools in which the peculiarities of no one sect are insisted upon or interfered with." I wish all children to be educated, not as members of religious sects, not as belonging to one religious party or another, but to come together on one common ground, as children of the State, to be educated together in mutual respect, forbearance, and good will, so far as differences of religious opinion are concerned. Sir, our common school system has been, and is now, conducted upon these liberal principles; and, I say, it is this school system that has done as much as any other one cause, to determine the character and condition of the people of Massachusetts.

Mr. WOOD. Will the gentleman allow me to ask him what he would propose to do, suppose any religious denomination refuse to send their children to your schools?

Mr. LOTHROP. I will answer the gentleman by saying that if we establish our system of common schools upon broad, liberal principles; if we open the door wide, and give all a fair and equal chance to come, we may rest assured that the

great mass of the community will avail themselves of the privilege; and if any do not, the fault will not be in the system, but in the narrowness and bigotry of those who prefer that their children should grow up in ignorance, unless they can send them to a sectarian school. The community will have done all that it can be asked to do.

Mr. CADY, of Monson. If I am rightly informed, the children of our Irish population are obliged to attend our common schools. It is a penal offence for them not to attend.

Mr. LOTHROP. I shall detain the Convention but a few moments more. I cannot but think this is a question of great importance; and our action upon it will have much influence upon the future character of Massachusetts. Sir, the subject of common schools has been a subject of much difficulty in all countries in the world. Where the attempt has been made to introduce a system of public education, in all countries where the attempt has failed, sectarianism, in one form or another, has been the cause. Is not sectarianism the very thing we are here trying to prevent, so far as our common schools are concerned? There is none of it now in these schools; and the only way in which you can prevent its introduction and influence, is to adopt the principle of the resolution it is proposed to reconsider. It is only upon this principle that we shall be able to conduct our common schools successfully, keep them free from sectarianism, and make them one of the great fountains of life and strength, prosperity and power, to the people of this Commonwealth. It is very well known that there are broad general religious truths, great fundamental religious ideas and principles, upon which all can unite, and where these alone—as is the case in our common schools—are recognized, and impressed upon the minds of the young, there will be, there can be, no sectarianism; nothing of such a character as that a Protestant or a Catholic, or a person of any religion whatever, would be unwilling to have his children attend the school. If he regards the best interests of his child he will send him to such a school. I maintain that no Catholic, no Protestant, no person of any denomination, can go into any of our public schools and say that there is anything taught there that he should be unwilling that his child should learn; or that anything is done to change or interfere with his religious opinions.

I hope the motion for reconsideration will not prevail; and that, as the matter has come up and has been acted upon once, we shall abide by that action, and adhere to the principle which is contained in the resolution.

Mr. FROTHINGHAM, of Charlestown. I have but one word to say in reference to this matter. It seems to me, that when the gentleman from Boston remarked that it had been better that the subject had not been introduced into this Convention, he yielded the whole point. Now, Sir, as that gentleman has stated, the subject was before the Committee of which I have the honor to be a member, and there, Sir, I took the ground against incorporating anything of this sort into the Constitution, simply because it was better to leave well enough alone; simply because it was unnecessary; simply because our common schools, as they are now, are open to all to be enjoyed in common, as free as the air we breathe; and I say, so let them remain, because the matter is governed by the unwritten law of public opinion of Massachusetts, and as well governed thus as it could be by any statute law or constitutional law that could be enacted.

Now, it seems to me, that our Constitution, when it provides that all denominations shall be placed upon a footing of equality, provides for each and every case of this kind that can arise; and I am in favor of the reconsideration and rejection of this resolution, simply and solely on the ground that it is putting unnecessary matter into the Constitution.

Mr. CHAPIN, of Webster. I wish to say a few words before recording my vote upon this question, in order that I may stand right before the community, and especially before posterity, for I regard this as not particularly affecting the present generation, but as prospective in its operation. I believe the policy of this Commonwealth, from the beginning of our government up to the present time, has been, to have but one class of schools, and they have been called common schools. They admit, and even require the attendance of all children between certain ages, in the Commonwealth. They are common schools, because the system of instruction is common to them all, and they are not allowed to introduce sectarianism, even under the present law; and I think the gentleman from Fitchburg will find it difficult to establish, from the law as it now stands, the proposition that sectarianism is permitted. Sir, a man is not allowed to go into our common schools, and teach the doctrine of the Congregationalists, the Baptists, or any other, as a creed; we are, therefore, adopting what is in exact conformity with the past usage of the Commonwealth. And I think it is perfectly right to do so. It establishes permanently, for the time to come, that which is approved by the universal sentiment of Massachusetts.

It has been said, there is no occasion or necessity for the introduction of a provision of this

kind; that no efforts have been made to establish sectarian schools. But it is well known, that efforts have been made in other parts of the Union. New York and other States have been afflicted with excitement on the subject. And I think it would be well to consider whether, in this State, we are not approaching the same condition, and whether it is not our best policy, to guard against it in time. I can see a reason for incorporating such a provision, in the very excitement that prevails in this Convention to-day. There is great sensitiveness manifested here, at the very mention of the subject. But it is contended, that the introduction of this provision will endanger the adoption by the people, of all the other amendments that we propose to make to the Constitution. I do not believe there is a man in Massachusetts, save one, who has the power to establish sectarianism; I do not believe there is a gentleman here, who thinks it right to do so, but there are gentlemen here who believe that the introduction of this provision will embarrass the amended Constitution, if not defeat it. Well, Sir, if we are embarrassed by the mere offering of the proposition, I think we had better understand it now, before it is too late; and, for this reason above all others, I shall go for the proposition embraced in the resolution, and against reconsideration.

Mr. COGSWELL, of Yarmouth. As one of the Committee from whom the Report on this subject was made, I desire to state one or two considerations that induced the Committee to report the resolution, the subject having been referred to them by an order of the Convention. It is well known, Sir, though it may not be known to all the members of this Convention, that the different religious denominations in this State, and in other States, have had this subject under consideration. The Presbyterian Church, especially, which comprises a great portion of Massachusetts, and of the Western and Middle States, have agitated the question. The Committee thought, that by putting an article of this kind into the Constitution, it would put an end to all controversy on the subject. It was not aimed at any particular sect, but was intended to cut off all sectional and denominational disputes on the subject of the distribution of the money raised for the support of schools, whether derived from taxation or from the common school fund, with the view of devoting it to the support of denominational schools. This was the object of the resolution reported by the Committee. The great object was, to preserve our common schools just as they are now managed, for all coming time. Massachusetts claims the honor of having been the first to introduce the common school system, and it has always been the practice to instruct all alike, without regard to differences in religious belief. The object is, to leave the system where it now is, for all coming time; to provide, that money to be raised for schools, shall never be devoted to the support of denominational schools. We have now, in this State, a fund of more than a million of dollars for common school purposes —it will soon be a million and a half. Well, now, I think nothing would be more disastrous than the application of this money to sectarian uses. It would be striking a blow at our civil institutions, to have this money divided among different denominations of religion. These were the reasons, and they were recognized by the Convention, for when the proposition was reported, no objection was made to it. It was thought to be highly necessary and proper, that such a constitutional provision should be enacted. And now, all on a sudden, gentlemen turn round and oppose it. I hope that it will not be reconsidered, but that it will be made a part of the amended Constitution. We may then reasonably expect that our schools will, in all coming time, continue to be conducted precisely as they have been heretofore.

Mr. CHANDLER, of Greenfield. When this motion to reconsider was made, I felt a great degree of indifference about it, because I considered that all the provision that was necessary to be made in relation to this subject had been made in a previous resolution. It has, however, assumed an importance in my mind since, more particularly, from the great misunderstanding which appears to prevail respecting the object designed to be accomplished by it. I had the honor to be upon the Committee to whom was referred an order to provide for the raising of a fund for a particular use,—to be appropriated to the support and maintenance of our common schools, as they now exist, in accordance with the system which has prevailed from the beginning. The Committee agreed upon a resolution to be presented to the Convention, providing for the raising of such fund. Well, if we consider the fund raised, what is to be done with it? The order under which the Committee was formed, made it imperative on the Committee to raise a fund for common schools, the great object being to secure the application of such fund to the purpose contemplated, viz.: the support and maintenance of our common schools, as they are, and prevent its being frittered away, or misapplied. Well, the question came up, is there any danger to be apprehended from sectarianism? Is there danger that any efforts will be made to divert any part of this fund to sectari-

an uses? That appeared to be the idea. That appeared to be the thing to be guarded against. It seemed to be supposed that various denominations in different parts of the country were endeavoring to get possession of the school funds, for the use of their own peculiar schools, not only the Catholics, but others. We wished, therefore, to secure the fund for the object for which it was provided, that is, for common schools, generally, without designating any particular system. Now, if we take the position that a part of this fund may be given to one denomination, another may come in and claim the same privilege, and another, and another, until the fund is completely exhausted, and perverted from its original design. We wish to avoid this. 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. This is to be regarded as sacred, and kept exclusively for the particular use for which it was designed. This is all, so far as I understand it, that was contemplated by the Committee. If the Convention do not approve of this principle, if they wish to leave the door open, for the distribution of this fund in the manner I have indicated, they ought to go back and reconsider the vote by which they accepted of the proposition which provides that that fund shall be devoted to a particular and specific use.

Mr. WARD, of Newton. Is an amendment now in order?

The PRESIDENT. An amendment is not now in order. The question is on the motion to reconsider.

Mr. WARD. I should like to have an opportunity to move to strike out the two last lines of the resolution, which it is moved to reconsider. The money would then be appropriated according to law, and in no other way.

Mr. BUTLER, of Lowell. I have no wish, Sir, to take up time, at this late hour, in debate, and it was this reluctance to consume the time unnecessarily, which induced me, when I addressed you before, to confine myself to a very few words, simply saying that I hoped this matter would be reconsidered, not supposing that I should thereby expose myself to the censure of the gentleman from Cambridge, (Mr. Parker,) that I had presumed to dictate to the Convention a course of action, without assigning any reasons why that course should be adopted. I have, thank God, a reason for the "faith that is in me," and I wish to say, first, that I look upon this resolution as the most sectarian resolution that can be brought before a deliberative assembly. And if I cannot convince gentlemen that it is so, I will give up all pretension to a knowledge of the principles of men's action from what they do.

Now for the history of this matter. An order was introduced on the thirteenth of June and referred to the Committee on the Encouragement of Literature, of which my friend from Pittsfield, (Mr. Briggs,) is chairman, and I am sorry he is not here to help me against this sectarian attack upon the resolve which that Committee reported. The order instructed the Committee 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.

The Committee reported a resolve, which is as follows:—

*Resolved*, That it is expedient so to amend the Constitution 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.

That covered all schools, Sir, from the humble village school up to Harvard University. It precluded the appropriation of money to the support of sectarian or denominational schools, of whatever grade, or class, or description. It precluded the appropriation of money to be expended for the benefit of Harvard University, because that is a sectarian school. And so of all other colleges. That is what was reported by the Committee. Then, without a word of explanation, comes this amendment from the representative of Harvard College—the guardian of the interests of that institution in this Convention; drawn with all the skill of a lawyer, and a very good lawyer too:—

That 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.

Leaving it open for money to be appropriated and distributed broadcast, if you please, hither and yon—to Harvard, to Williams, and to Amherst College, or any other institution of learning, whether sectarian or otherwise. A carefully and technically worded resolution. What do we want with such a provision? In the first place, the school shall be kept according

to law. That is the first item. In the name of all that is good, why not put into the Constitution that when it rains it shall rain? That is all we have got here until we come to the sting in the tail, which is this: "shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools."

Now, one word in reference to the remarks of the gentleman from Boston, (Mr. Lothrop,) whom I commend for his morality. He says he wants every Catholic child to go to our common schools; and the gentleman from Fitchburg, (Mr. Wood,) says they may be compelled to go.

Mr. LOTHROP. I am quite confident, Sir, that I could not have used those words—that I wanted every Catholic child to go to our common schools. I said I wanted all our Irish population to send their children to our common schools.

Mr. BUTLER. I am bound to take the gentleman's recantation; but, Sir, I am not mistaken. The gentleman said—and the expression was accompanied with a very emphatic waive of the hand—I want all Catholic children to go to our schools.

Mr. LOTHROP. I could not have said that.

Mr. BUTLER. My recollection is perfect, Sir, as was the elocution of the gentleman. "I want all Catholic children," says the gentleman, "to go to our Protestant schools." Those are the words. I called the attention of several gentlemen to them at the time they were uttered. And I appeal to the reporter's notes whether I am not correct. Sir, I was educated in our common schools——

Mr. LOTHROP. I rise to a question of order. I understood the gentleman to accede to my recantation, as he chooses to call it. If he accedes to that, I maintain he has no right to continue to argue as if I had used the language which he attributed to me. I maintain that I did not use the expression, that I wished Catholics to go to Protestants schools. I know myself too well to believe that I could have said any such thing. And, if the gentleman insists on fastening it upon me, I must appeal to the House. If the gentleman accepts my explanation, he must not go on arguing as if I had used that language.

Mr. BUTLER. Again, I say, I yield to the gentleman's repudiation of his language, if he says he did not mean it; but if he says he did not say it, I repeat, that he did say it. I thought it was said in heat, and without due consideration.

Mr. JENKS, of Boston. I sat much nearer to the gentleman from Boston (Mr. Lothrop) than the gentleman from Lowell did, and I know that he did not make use of the word Protestant.

The PRESIDENT. This is not strictly a question of order. It is a mere difference of opinion as to the language used by the gentleman from Boston.

Mr. BUTLER. I will not dwell upon it, Sir. I have stated the language that was used by the gentleman; I now pass from that. I was proceeding to say, that I was reared in Protestant schools where some gentlemen say there is no sectarianism. The first Class Book that was put into my hands was one prepared by an eminent Unitarian clergyman; and in that I read sentiments calculated to instil into the mind a detestation of Catholics. I imbibed such detestation, and when I first saw a Catholic, I thought I was looking upon a monster, and almost expected to see the cloven foot. Yet, gentlemen will say such teaching is not sectarian.

My friend on the left, (Mr. Chandler,)—and what he says commends itself to me on account of his mature years and ripened judgment,—says he does not want any sectarianism introduced into our schools, on one side, or the other. He says the system works admirably; that it is an admirable common school system. Why tinker with it then? Why meddle with it at all, if it works so well, and is so admirable? Why, my friend says, because in other States there is trouble. Let those States take care of themselves. Why should we foresee trouble, and create it by an attempted resistance to it. The moment you send out this declaration, it will enter into all your elections everywhere, as an element of agitation. If you strike the first blow, the fight is begun. Let him that is without sin among you cast the first stone. We teach Protestantism, and believe it to be right, and we glory in that belief. But is that any reason why we should force it upon our neighbors? Why we should say we will tax you for the teaching of our Protestantism? Is it any less proper for the Universalists, or Baptists to say, there is no sectarian issue in their teaching. Those who have religious creeds differing from our own, worship the same God, bow before the same altar, read from the same Bible; but differ in its interpretation. Now, I ask gentlemen, if they are ready to introduce such a controversy into the politics of this State? For one, I wash my hands of it. I want our school system to remain as it is.

It is said that a difficulty has arisen in other States. Grant it as much as you please. Why should we precipitate it here? Why should we be thus tormented, before our time? If it must come, the legislature will meet it. I want the reconsideration for the reason given by my friend from Newton, (Mr. Ward,) in order to strike out

the last two lines of the resolution. I will then vote for it, although it will be something like the boy's brandy and water with the brandy left out. [A laugh.] It will then be :—

*Resolved*, That all moneys, &c., for the support of common schools shall be applied to and expended in no other schools than those which are conducted according to law."

Well, how are you to apply it in any other way? All I have to say of it is, *Parturient montes et nascitur ridiculus mus.*

Mr. BALL, of Upton. If I wanted a text upon which to preach, I should have it in the proposition before you. The resolution passed without a word being said about it. Gentlemen were all perfectly well satisfied that it contained the principle which they were all in favor of; and then all at once, just at the close of the session, they start up and say that the great mass of the citizens of Massachusetts are arrayed against it, and that they will vote down the new Constitution if this proposition is retained in it. And in the name of all that is good and sacred, let us—say they—O! let us withdraw it, that our amended Constitution may not be lost. The gentleman from Lowell, (Mr. Butler,) has made a strong argument against withdrawing the provision. He says that when he went to the public schools he was taught from sectarian books—that the books used were clearly and decidedly sectarian. If this be so, it is highly necessary that measures should be taken to free those schools from sectarianism. I am ready, on his own showing, to vote against the reconsideration. Is not this new movement like something we have had before in this State, one of the compromises made for the purpose of damning to eternal infamy a party that is dreaded? Will gentlemen withdraw from the position they took, because they fear the Catholics? Sir, I am known to all the Catholics of my town, and I will venture to say, that in voting to retain this provision, I shall not be regarded by them as being sectarian. If our schools have any thing that is sectarian, let us remove it, let us correct the evil as speedily as possible. If we have done wrong in the past, is it any reason why we should continue to do wrong? If we have sectarian books in our schools now, is that a reason why we should continue to use such? No, Sir; if we would all meet upon common ground, let us incorporate this provision in the Constitution, and keep it there. A compromise to be made at this last moment! A compromise, for what? For fear the people of Massachusetts should become sectarian? For fear of the Catholics? Great God! We have nothing to fear from the Catholics. They are more our friends than our enemies. Open your doors wide to all, and banish sectarianism from your schools, and Catholics will become Protestants through the influence of these schools. For these reasons, I trust the provision will be retained. I trust the Convention is not ready to withdraw from the position it has taken, a position that was fair, and honest, and proper at the time it was taken, and so regarded by every one.

Mr. WHITNEY, of Conway. It seems to me, Sir, that this debate must satisfy every gentleman, that in placing such an amendment as this in the Constitution, we are treading upon delicate ground. It appears to me that when we look around over the good old Commonwealth of Massachusetts, and see how harmoniously and successfully our common school system is operating, and when we consider that no attempt has ever been made to introduce sectarianism, we cannot fail to be convinced that the introduction of such a provision as this into the Constitution, must be productive of injurious consequences, and that it would be far better to leave the article in relation to our common schools as it now stands, and leave all religious sects to stand upon the same footing, without any subordination of one to another, and without any preference of one over another in the matter of education in the schools of the State. It seems to me it would be far better, as has been well said by the gentleman from Charlestown, to let well enough alone. The introduction of this provision into the Constitution, I submit, may give rise to agitations which will seriously disturb your common schools throughout Massachusetts. How is it in your little towns now? Your school committees are, to a great extent, composed of the clergymen of various religious sects, Baptists, Presbyterians, and even Catholics, and no complaint that I am aware of is made. Well, now, insert such a provision; and may it not be said by persons disposed to seek objections, you are making an unequal appropriation or supervision so far as sects are concerned, of your school fund? You are endeavoring to prevent the appropriation of the fund to a school that is sectarian, and yet you have upon your school committees men who are sectarian. How are you going to make answer under these constitutional provisions? In my opinion, you will produce much trouble and confusion in your common schools throughout the Commonwealth. And I can see no reason to apprehend that the money to be appropriated for common school purposes from any quarter, is to be applied for sectarian purposes. The public sentiment is more and more doing away with sectarian bias, as connected with public schools.

Why agitate this question? It will only be bringing about the very result which we wish to avoid. I think, as I have said, that we are well enough at present, and that we had better let well enough alone. It will be impossible to find men who are outside or beyond the power of sectarian bias, to some extent, for your school committees; but public sentiment is such, that you will find no improper application of sectarian influences in your common schools.

It has been remarked that the Committee would not have introduced this question, but inasmuch as it had been introduced, it was a reason why we should go farther on. Why, Sir, if it was unwise to introduce it here, it certainly would be still more unwise to incorporate it into your Constitution. As the gentleman from Lowell, (Mr. Butler,) remarked, why declare in your Constitution a universally acknowledged principle. I see no reason except for the purpose of exciting agitation upon this question; why not then reconsider this motion? Agitation will be most likely to result from a proposition of this character, and the effect of such agitation, would, in the end, be most disastrous. I hope the motion to reconsider will prevail.

Mr. CROWNINSHIELD, of Boston. I shall not detain the Convention many minutes. I have only this to say, that I can assure gentlemen, their Catholic friends are not so weak as to be caught by such chaff as this. Sir, as I understand this question, the provision has gone through the usual stages, and has been finally passed, and now gentlemen wake up and move a reconsideration, because they are afraid of the effect it may have upon the Catholic population of the Commonwealth. Sir, gentlemen have sat in their seats while this provision passed through all its stages to its final passage, and no voice was raised against it. And now, on the very last day, or last but one of the session, lo! a violent indignation is gotten up against the resolution, and it is insisted that it must be expunged. Now, Sir, I happen to know something about the feeling of the Catholics in regard to this Convention, and I tell gentlemen the Catholics are not to be led away by any such proceeding as this. The Catholics understand it. They know the object of it, and they know the purpose for which the resolution was originally passed. They know, too, that the great question of representation has been passed so as to disfranchise them. And if gentlemen suppose that such a movement as this is to conciliate them, let me tell them they are mistaken.

Mr. THOMAS, of Weymouth, moved the previous question.

Mr. PARKER, of Cambridge. I hope the gentleman from Weymouth will withdraw the motion for the previous question, to enable me to make some reply, not only to the arguments which have been offered, but to the personal attack which has been made upon me by the gentleman—I mean by the member from Lowell.

Mr. THOMAS, of Weymouth. If the gentleman will renew it, at the close of his remarks, I will consent.

Mr. PARKER. I will do so.

Mr. BATES, of Plymouth. I believe the gentleman from Cambridge has already spoken upon this question.

Mr. PARKER. I have, Sir, and have the floor again, by the recognition of the President.

Mr. BATES. I believe the gentleman has spoken his fifteen minutes.

Mr. PARKER. The gentleman is mistaken. I did not occupy over half that time.

The PRESIDENT. The gentleman from Cambridge has spoken once, but he has not occupied his full time.

Mr. PARKER. Mr. President: I have known something of the gentleman—of the member from Lowell—for some time, and I have heard considerable of him, first and last, and perhaps I ought not to be surprised at anything coming from him, and yet I am. I am truly surprised at the personal attack which he has allowed himself to make upon me, upon the floor of the Convention to-day, as I had said nothing to provoke such an attack from that gentleman, or rather, from that member. It is true, I had some agency in introducing this resolution—a resolution which has passed without a division—so unanimous was the feeling in favor of it. A motion for reconsideration was made, and the gentleman—the member from Lowell—Sir, I have been in the habit of calling him the gentleman from Lowell, and will continue so to do—took the floor, and expressed his personal wish, without reason or argument to support it, that this matter should be reconsidered, as if his personal wish was sufficient to determine the action of the Convention, and induce them to undo all that they had done; and upon this it seemed as if the question was about to be taken. It was in reference to that; because I had no argument to answer, and because it was for those who favored the reconsideration, to offer some reasons why the action of the Convention should be changed, that I said, in substance, that if that gentleman's mere wishes were to determine the action of the Convention, it was well that it should be understood. I supposed there was some reason that might be offered. We have now been favored with a reason. And I desire

to make a few remarks in reply; but I must be permitted again to say, I am astonished that the gentleman from Lowell should have forgotten all courtesy, and have been guilty of the indecorum of speaking of me as the representative of Harvard University. Sir, it was an indecorum that I should hardly have expected, even from him. Sir, I am not the representative of Harvard College. I have no such relations with that institution as will justify any one in speaking of me as its representative. Nor have I used an argument that would authorize anybody to speak of me in that way. It is true, that I am connected with one of the professional schools in that institution; but so far as that is concerned, the gentleman might as well be characterized as a representative of a law office in the city of Lowell.

The PRESIDENT. The Chair desires to say that he did not understand the gentleman from Lowell as speaking of the gentleman from Cambridge as the representative of Harvard College.

Mr. PARKER. Sir, he spoke of me as representing Harvard College, and he imputed motives with reference to that institution as the governing motives with me in offering this resolution, and as the inducement for its introduction. That was the burden of his speech—that it was clearly to be seen what were the influences which induced the gentleman from Cambridge to act in this matter. Now, I trust I need not disclaim, before the members of this Convention, any such motives. I trust my conduct on this floor has commended me so far to gentlemen here, that they do not need my disclaimer of being actuated by any other motives than those of a member desirous of doing his duty. But enough of that. The gentleman from Walpole (Mr. Bird) suggested that there had been no reason offered why this measure should be adopted by the Convention. Sir, as I said before, I supposed it was for the friends of the reconsideration to show why the action of the Convention should be changed. I was ready, however, with reasons, and have been attempting to gain the floor for the purpose of stating them; but the rules of the Convention gave it to others, because I had spoken once.

Sir, we have heard reasons assigned from various quarters, but an additional fact or two may be stated. One gentleman, a member, has informed me, since the commencement of the session, that his parish clergyman, an Episcopalian, a very worthy man, declared to him that they must have parish schools. Another gentleman in the Convention has stated that he heard a very worthy Congregationalist clergyman declare that it was necessary for his denomination to have such schools. Sir, it is not the Catholics alone who are looking to the school fund as a means of sustaining their peculiar tenets. Nor does this resolution, in its terms, have any reference to them at all; but they have been introduced, and the statements which have been made only add another to the evidences to show that it is necessary that something should be done here. Sir, nothing more is necessary to show the necessity for a constitutional provision, than to refer to the arguments of the gentleman from Fitchburg, and the gentleman from Conway, and others. The gentleman for Wilbraham says he does not want to put a firebrand into the town meetings. Sir, the object of this resolution is to extinguish the firebrand. The gentleman from Fitchburg admits that there is no law for it, but he proposes to appropriate a part of this money to sectarian purposes. He avows it here.

Mr. WOOD. No, Sir. The gentleman is mistaken.

Mr. PARKER. Not sectarian; but he proposes to give the Catholics their share.

Mr. WOOD. For the purposes of education.

Mr. PARKER. Yes; for the purposes of education, according to their peculiar notions. Now, that very circumstance, and the excitement which is found to exist upon this subject in this Convention, shows conclusively why we should act upon it, and extinguish the firebrand, so that it shall not be possible to rekindle it and make it the means of a conflagration which may destroy your common schools. They are in danger, undoubtedly.

The gentleman for Wilbraham finds it difficult to understand the resolution. He cannot understand the meaning of the word "sect." Sir, that gentleman does not ordinarily find any difficulty in ascertaining the meaning of anything which he wishes to understand. But he can ask for definitions when a proposition does not suit him. It was but the other day that he wanted a definition of the word "blasphemy," and when he had got that, he wanted a definition of "contumeliously;" and now he wants a definition of the word "sect." Sir, if the gentleman cannot understand it, let him put it to a jury as a part of the law and the fact, and it will readily be settled for him. [A laugh.]

Sir, the reasons that are given for the reconsideration, are altogether contradictory.

One gentleman is for doing nothing, because, he says, it is altogether unnecessary; because there is no agitation, and will be none. Another is opposed to the resolution because it will cause a serious agitation; because the very mention of it here produces excitement. Well, Sir, if this subject is to be a source of agitation in case we act upon it, will it be less a source of agitation if

you omit this provision from the Constitution? I appeal to gentlemen to judge for themselves. It requires no spirit of prophecy to say, that from one quarter or another—I make no invidious distinction—the objection will come, that your common schools have not sufficient of the religious element in them, or that other sects are endeavoring to infuse into the minds of the scholars the doctrines and tenets of their particular faith; and the consequence may be a division of the school moneys, and the subversion of our glorious system for the education of all through the agency of free and common schools, because you have not a constitutional provision to prevent agitation on the subject.

Sir, a word more respecting the origin of this resolution. The subject came up in the ordinary action of the Convention, through a motion to refer it, and the Report of a Committee. Prior to that Report, and before I was aware that any motion had been made, I had drawn a resolution with a view of offering it. When objection was made to the resolution reported by the Committee, I showed the one I had drawn to the gentleman from Natick, (Mr. Wilson,) who, it will be recollected, expressed his approbation of it to the Convention, and his desire that I would offer it, which, however, I could not do at that time, because an amendment was then pending; but it was read for the information of the Convention. Before there was any opportunity to move it, the Report and resolution of the Committee were laid upon the table. An attempt, by the chairman of the Committee, (Mr. Briggs,) to have the Report taken up, failed; after which, having slightly altered the phraseology of the resolution which I had read, and at the suggestion of a gentleman from Boston, (Mr. Blagden,) added the last clause—all which, in my view, in no way changes its effect—I introduced it, and it was printed. I have not time to state the farther history of it, nor is it necessary. It has already been stated.

The gentleman from Lowell says the proposition is sectarian in its purposes. Let him read it, and see if it is or not.

[Here the President's hammer announced the expiration of the time allotted for a speech.]

Mr. PARKER. I renew the motion for the previous question.

Mr. BUTLER, of Lowell. Will the gentleman allow me to say a word by way of personal explanation.

Mr. PARKER. I cannot withdraw the motion, because I promised the gentleman from Weymouth that I would renew it at the close of my remarks.

Mr. BUTLER. I shall be obliged, then, to ask permission of the Convention to say a few words.

Mr. THOMAS, of Weymouth. I consent that the motion for the previous question shall be withdrawn.

Mr. PARKER. Then I withdraw it.

Mr. BUTLER. I shall not trespass long upon the time of the Convention. Though I may have felt it to be a duty to speak frequently, yet it cannot be said that I have troubled the Convention with long speeches.

The gentleman from Cambridge, Sir, seems to have worked himself into a considerable degree of indignation upon this question, because he seemed to think that I had commented too freely upon his personal action in this matter. I referred to it so far as to say that the resolution had been drawn with all the skill of an astute lawyer, in a manner to do no discredit to the legal adviser of the institution with which he is connected at Cambridge. And I now call the attention of the Convention to the fact, that, although he stood upon the floor for fifteen minutes, he has not disclaimed the fact, and has not disproved a word that I have said. He has not attempted to show that his resolution is intended to prevent sectarianism. How, then, does it appear that I have imputed wrong motives to the gentleman? I say, again, that, in my judgment, this is a Harvard College resolution.

The PRESIDENT. The Chair is of the opinion that it is not in order for the gentleman to characterize the resolution in that manner.

Mr. PARKER. I rise for the purpose of making a disclaimer.

The PRESIDENT. Does the gentleman from Lowell yield the floor?

Mr. BUTLER. The gentleman refused to withdraw the previous question to permit me to speak, and I do not feel at liberty now to yield my right.

Mr. PARKER. If a disclaimer is necessary, I desire to say, that so far as I recollect, I never exchanged a word with any one connected with Harvard College, on the subject of the resolution which I introduced, except a student in the Law School, for a moment, who spoke of the importance of the subject, and my associate professor in that department, to whom I believe I mentioned that I intended to introduce one. No suggestion was made to me respecting my introducing, or supporting anything of the kind. I acted solely upon my own personal view of the matter, and Harvard College, or the interests of Harvard College, were not in my thoughts in connection with it.

The PRESIDENT. The Chair desires to say

in regard to the interpretation to be given to the resolution, gentlemen may put such construction upon it as they please, but they are not at liberty to arraign the motives of the mover.

Mr. BUTLER. I never arraign the motives of any man without cause.

Now, Sir, a word in reference to the gentleman from Boston, (Mr. Crowninshield,) who has let the cat out of the bag completely. He says if gentlemen expect to get Catholic votes by such a movement as this, they are mistaken. Out of the abundance of the heart the mouth speaketh. He says, if you think to save the Constitution in this way you will be disappointed, that the Catholics will be against you nevertheless. The resolution was characterized by the gentleman as an intended attack on the Catholic population, and, says he, they are not to be deceived by such a bait as this. Now it is very evident what is at the bottom of all this, when we hear gentlemen threatening to procure votes against the Constitution. Let gentlemen not misunderstand its significance.

Mr. PERKINS, of Malden, moved the previous question.

Mr. WHITE, of Quincy. I hope the previous question will not be sustained. The gentleman from Boston has made remarks concerning the reconsideration, which, it seems to me, ought to be replied to and corrected. I made the motion to reconsider, and should like to have an opportunity to explain the circumstances which led me to make that motion.

The previous question was seconded, and the main question ordered to be now put.

The question being on the motion to reconsider, a division was called for.

Mr. HALLETT, for Wilbraham, demanded the yeas and nays.

The PRESIDENT. The yeas and nays have been refused.

Mr. HALLETT. Are we not entitled to have the yeas and nays as a verification of the vote?

The PRESIDENT. The motion for the yeas and nays having been rejected, it is not competent to renew the same motion.

Mr. HALLETT. I rise to a point of order. I understand the Chair to say that the yeas and nays have, at some stage of this question, been called, and have been refused.

The PRESIDENT. Such is the case.

Mr. HALLETT. According to a former ruling of the Chair, as I understand, there are two purposes to which the yeas and nays apply. One is, to ascertain the sentiment of the House upon a given question, and the other is, as a verification of the vote upon a question. The question has now been put upon the motion to reconsider. While the House was dividing, and before the President declared what the vote was, I rose and asked for the yeas and nays as a verification of the vote. The Convention certainly have this right. It is an entirely distinct purpose from that for which they were originally called. I ask if such has not been the decision of the Chair?

The PRESIDENT. The Chair has made no such decision. There is but one purpose, that is, to determine the result. The difficulty is, the yeas and nays have been moved and refused.

Mr. HALLETT. If the Chair holds it is not in order to call for the yeas and nays at this time, it is a very different ruling from that which the Chair has made on a former occasion.

The PRESIDENT. The Chair has never ruled as the gentleman states.

Mr. BUTLER. I move a reconsideration of the vote by which the yeas and nays were refused.

The PRESIDENT. It is too late for such a motion.

The question was then taken on the motion to reconsider the vote by which the resolve on the subject of sectarian schools was passed, and upon a division, there were—ayes, 87; noes, 183.

So the motion to reconsider did not prevail.

*Imprisonment for Debt.*

The PRESIDENT. The next matter on the Orders of the Day is the motion to reconsider the vote by which the resolve on the subject of imprisonment for debt was passed.

Mr. BUTLER, of Lowell. I wish to make an inquiry. I believe this resolve was never before the Committee of the Whole.

Mr. WILSON, of Natick. I understand there is a Report made by the Judiciary Committee, on a very important matter, which the Committee on Revision need to-night. I therefore move that the Orders of the Day be laid upon the table.

The motion was agreed to.

*Tenure of Office.*

On motion of Mr. DANA, for Manchester, the Convention took up for consideration the Report from the Committee on the Judiciary, respecting the tenure of office.

The Report was read, as follows:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, July 28, 1853.

The Committee on the Judiciary, to whom was referred the order of July 26th, 1853, have considered the same, and report the accompanying resolves.

MARCUS MORTON, *Chairman.*

1. *Resolved*, That persons holding office by

election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided, however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provison shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of Governor, Lieutenant-Governor, Councillor, Senator, member of the House of Representatives, and Town and City officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution, shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

Mr. DANA moved to amend the third resolution, by striking out the proviso.

Mr. DANA. I wish to say, Sir, that I have submitted this amendment to two gentlemen of of the Judiciary Committee, and they approved of it. I have not been able to find the other members of the Committee, or I would have consulted them also. I will simply state to the house the purport of the proposition. It provides that clerks of courts, sheriffs, &c., shall be elected for three years, the governor having the power of removal, "*provided*, that a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence."

Now, it may happen that a sheriff may fall into habits of intemperance; or in times of civil commotion he may have gone over to the enemy; he may be guilty of treason; yet nobody can touch him. The clerk of a court may become involved in some fraudulent transaction, or may commit a misdemeanor; he may become treacherous, and refuse to deliver up papers. Now, I want to provide that the governor shall have power to remove these officers for causes such as these. The difficulty, as the matter now stands, would be, that they could not be removed without a hearing, an examination of the charges against them, and such formalities as might not be consistent with the public exigencies. It is simply provided in this amendment that the governor shall have the power, if the exigencies of the case require it, to suspend these officers, and make a temporary appointment to hold only until an examination can be had, and the charges verified or disproved. That is the whole of it. The governor must, in all cases, enter the cause of removal upon the record, and the party must be heard, and he cannot be removed without the consent of the council. And it must be remembered they are all elective officers. There is no danger of the governor and council abusing the power. But it is certain that such a power should exist somewhere, especially in the case of sheriffs.

Mr. CHAPIN, of Worcester. I rise to say that I am entirely satisfied with the amendment which the gentleman has proposed, so far as the matter of removal is concerned. I suppose no governor would undertake to remove an elective officer unless for sufficient cause. Therefore, it seems to me that the article is sufficiently guarded in the amendment, and the interests of the Commonwealth will be thereby the better protected.

Mr. TRAIN, of Framingham. My attention has been directed to this matter only since the gentleman has called it up; but it seems to me we ought to define the causes for which the governor and council may remove an officer. As it is, the governor, with the advice of the council, may remove an officer for any cause. If the governor chooses to find fault with me for being only five feet and a half in height, he may remove me from an office to which I have been elected by the people. Now, I do not believe the Convention desire to intrust such power in the hands of the governor and council. And for the purpose of reaching such cases, there is a provision in the Constitution of the State of New York, which covers the whole ground. But not to detain the Convention, I will move to strike out the words "cause shown," and insert the words "disability, incapacity, or malfeasance in office."

The PRESIDENT. The gentleman's amendment will be in order after this is disposed of. The present proposition is to strike from the third resolve the proviso which is in these words: "*provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence."

Mr. HALLETT, for Wilbraham. I hope the amendment will not be adopted. I think the provision goes far enough as it is. The amendment would give a most extraordinary power to the governor and council. Give them the power of removal, if you please, but this gives the governor the power, whenever he chooses to charge a man with disability, to immediately suspend him from office; and when an examination is had, if it be had at all, it may turn out that the charge is utterly groundless and malicious. I question very much the propriety of placing this power in the hands of the executive. I am willing that the governor should have the power of appointment to fill a vacancy, but I am not quite prepared to go so far as to give him the power of removal, in the case of an elective officer, at his mere will and pleasure. I should greatly prefer the amendment of the gentleman from Framingham. The moment an officer is elected, if the governor does not like him, he has only to make out a specification of charges against him, and from that moment the officer is suspended from the discharge of the duties of the office to which he has been elected; and the governor then fills the office with a man of his own choosing.

Mr. BATES, of Plymouth. I rise for the purpose of inquiring whether this is the final stage of these resolves?

The PRESIDENT. It is not. The question will be on ordering the resolves to a second reading, after the proposed amendments shall have been disposed of.

Mr. HOPKINSON, of Boston. The matter presents itself to my mind very much as it is viewed by the gentleman for Wilbraham. At present, such officers could not be removed, except by act of the legislature, to be adopted by a vote of two-thirds. It appears to me we should not give to the governor and council a power so much greater than the legislature has. I think there ought to be not only a specification of charges, but a substantiation of them, before the power of removal should be exercised. The man elected to an office, might be obnoxious to the governor for the time being; and, to get rid of him, nothing more would be requisite than the mere will of the governor and council. There should be some such restriction as is contained in the Constitution of the State of New York. It should not be a mere matter of discretion with the governor, whether a man who has been elected, shall retain his office or not. A mere accusation, it seems to me, is not a sufficient reason for removing a man from office.

Mr. BUTLER, of Lowell. I merely wish to say, that if gentlemen will look at this matter for a moment in the light in which I view it, I think they will not find so much difficulty as they seem to apprehend. I think they will see that there can be no great danger of this power being abused. All these officers, viz.: clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices of police courts, are to be elected triennially, and when a vacancy occurs, an election to fill such vacancy will take place at the next annual election; so that the power of the governor to make a temporary appointment, would only extend to the time of the next annual election, perhaps six or nine months at the farthest. There would be but little gained by a temporary appointment for a period so limited; and the governor would scarcely attempt to make use of the power, therefore, for political purposes. It would hardly pay. Now, take the case of——

The PRESIDENT. The attention of the Chair is called to the fact, that the resolves have never been committed to the Committee of the Whole. It will be necessary that they be so committed, or else that the rule be suspended.

Mr. BIRD, of Walpole. I move that the rule be suspended.

Mr. HALLETT, for Wilbraham. Are you going to suspend the rule to pass these resolves?

Mr. BIRD. No; only to order them to a second reading.

The question upon the motion to suspend the rule being put, a division was asked for, and upon a count, it appeared there was not a quorum voting.

Mr. CROWNINSHIELD, of Boston, moved that the Convention adjourn. A division was called for, and a count being had, there were—ayes, 23; noes, 76. The President voted in the negative, making a quorum; and the Convention refused to adjourn.

The question was then taken on the motion to suspend the rule, and—by ayes, 95; noes, 6—it was decided in the affirmative.

The question recurred on the amendment moved by the gentleman for Manchester, (Mr. Dana).

Mr. HOPKINSON, of Boston. I rise only for the purpose of making a suggestion which may serve to facilitate our proceeding. It is

this: As this matter now stands, not having been considered in Committee of the Whole, we are not prepared to act upon it, and this is not its final stage. I therefore suggest that the amendment be withdrawn at this time, and that the resolves be passed to their second reading, and to-morrow, when they come up, we shall be ready to consider the amendment, and act upon it as well as upon the final passage of the resolves.

Mr. DANA, in accordance with the suggestion made by the gentleman from Boston, withdrew his amendment, and

The resolves were ordered to a second reading.

*Orders of the Day.*

On motion of Mr. TRAIN, of Framingham, the Convention resumed the consideration of the Orders of the Day. The next item on the Orders being the motion to reconsider the vote by which the resolve was passed in relation to

*Imprisonment for Debt.*

Mr. SCHOULER, of Boston, moved that the motion to reconsider be laid upon the table.

The motion was agreed to.

*Debates and Proceedings.*

The following Reports from the Committee on Reporting and Printing were taken up, and, under a suspension of the rules, read twice and concurred in.

COMMONWEALTH OF MASSACHUSETTS.
*In Convention*, July 28, 1853.

The Committee on Reporting and Printing, to whom was referred the business of superintending the Reporting and Publication of the Debates and Proceedings of the Convention, ask leave to report the following resolutions.

For the Committee,
M. BATES, JR., *Chairman.*

*Resolved*, That the chairman of the Committee on Reporting and Printing be authorized, under the direction and sanction of said Committee, to superintend the Reporting, Indexing, Printing and Publication of the Debates and Proceedings of the Convention, until the same are completed, and that he be paid therefor the sum of four dollars per day, and travel.

*Resolved*, That said Committee be authorized to pay to the Secretary of the Commonwealth such expenses, not exceeding six hundred dollars, as may have been incurred for extra services performed by order of this Convention, and that the Order of May 18th, be so far altered as that said Committee shall have the direction of all matters relative to the sale or distribution of the Reports and Proceedings of this Convention.

*Resolved*, That a copy of the Debates and Proceedings of this Convention, when completed, be furnished by the Committee to each of the Reporters to the Convention.

COMMONWEALTH OF MASSACHUSETTS.
*In Convention*, July 28, 1853.

The Committee on Reporting and Printing, to whom was referred the order of July 21st relative to appending to the published Debates, "Poole's Statistical View of the Members," and the "pay for the travel and attendance of members," have considered the same, and report, that it is inexpedient for the Convention to take any action thereon.

For the Committee,
M. BATES, JR., *Chairman.*

*Journal of Committee of the Whole.*

Mr. BIRD, of Walpole, from the Committee on the Preservation of the Records, submitted a Report, authorizing James T. Robinson, Esq., one of the Secretaries of the Convention, to make up the Journal of the Proceedings in Committee of the Whole, and to prepare an Index for the same, at the same rate of compensation as that allowed for the Journal of the Convention and Index to the same.

The Report was adopted.

*Suspension of a Rule.*

Some conversation ensued, respecting an informality in the proceedings relating to the resolve on the subject of imprisonment for debt, which informality was subsequently remedied by the suspension of the rule which requires all propositions for amending the Constitution, to be considered in Committee of the Whole, before they are debated and finally acted upon in Convention, so far as relates to that particular subject.

On motion by Mr. WOOD, of Fitchburg, the Convention then, at half past seven o'clock, adjourned until to-morrow at nine o'clock, A. M.

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SATURDAY, July 30, 1853.

The Convention assembled pursuant to adjournment, and was called to order by the President, at nine o'clock.

Prayer by the Chaplain.

The journal of yesterday was read.

*Superintendence of Printing the Debates.*

The resolution reported from the Committee on Reporting and Printing, in relation to the superintendence of the printing of the Debates, was read and adopted.

*The Amended Constitution.*

On motion by Mr. WALKER, of North Brookfield, it was ordered, that one hundred thousand copies of the Amended Constitution be printed for distribution, and that a copy of the same be sent to every family in the Commonwealth.

On motion by Mr. DANA, for Manchester, the Convention proceeded to the consideration of the Orders of the Day, the first item being the resolves reported from the Committee on the Judiciary, in relation to the

*Tenure of Office,*

The question being upon their final passage.

They were read, as follows:—

1. *Resolved*, That persons holding office by election or appointment under the present Constitution, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this amended Constitution; when all powers not reserved to them by the provisions of this amended Constitution shall cease: *provided*, *however*, that Justices of the Peace, Justices of the Peace and of the Quorum, and Commissioners of Insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid.

2. *Resolved*, That the Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in case where provision shall be made therein.

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided*, *however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

4. *Resolved*, That whenever a vacancy shall occur in any elective office provided for in this Constitution, except that of Governor, Lieutenant-Governor, Councillor, Senator, member of the House of Representatives, and Town and City officers, the Governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided*, *however*, Trial Justices shall not be deemed to be town officers for this purpose.

5. *Resolved*, That all elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, A. D. 1854.

Mr. DANA, for Manchester, moved to amend the third resolve, by striking out all after the word "provided," and inserting the following:—

That the cause be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the Governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes who shall hold office until the final action upon the question of removal.

Mr. DANA. The object of this third resolve is, to enable the governor to remove and appoint a substitute in the place of an officer who shall become insane, or otherwise incompetent to discharge the duties of the office, or who shall become unfaithful to the government in a time of emergency. Formerly, the governor had the power of removal in all cases, and of making appointments, but you have incorporated into the new Constitution a provision by which all these officers mentioned in the third section, are to be elected by the people for three years, and the governor has no power of removal or suspension in regard to them, whatever. Accordingly, if a sheriff should become insane, or incompetent, or unfaithful, he could still hold his office for three years, in defiance of the Commonwealth, and to the great injury of the public interest. Every one must agree that the governor should have the power of removal in such cases; the only question is, how it should be exercised. The Committee originally proposed that the governor should remove the officer, but that he should first specify the charges against him, and enter them upon the records, and give him notice thereof, that he might have an opportunity for defence. The amendment proposes, in addition to that, that the governor shall have power, during the hearing of the charges, to suspend the officer, and make a temporary appointment to fill his place. The case may easily be conceived, of a sheriff, or a clerk of a court, or other incumbent of an important office, becoming insane or otherwise incapacitated, or they may prove unfaithful, traitorous in time of insurrection, or invasion; they may have gone over to the enemy, and yet, if the governor has not this power of removal and appointment *ad interim*, the business of the office must be suspended while the case is being investigated, and all that time there would be no sheriff, or no clerk, as the case might be. It is

absolutely necessary to the carrying on of the government, that this power should exist. I have consulted with the members of the Committee on the Judiciary, and they are in favor of the amendment, as are also the Committee on Revision. I hope it will be adopted without any objection.

Mr. DAVIS, of Worcester. As I understand the matter, the governor will have the power, if this amendment be adopted, to supersede an election by the people, by an appointment of his own, whenever he thinks proper to do so.

Mr. DANA. If the gentleman will permit me, I ought to have said also, that there is a provision which directs that, in case of a vacancy occurring in an office which is elective for the term of three years, it shall be filled by an election at the next annual election, so that if the governor remove an officer, and appoint another in his place, such appointment can only hold good, under any circumstances, until the next annual election. Gentlemen will perceive, then, that the governor could have very little inducement for making a removal and appointment unless the cause contemplated by the Constitution actually existed. And the whole matter must become a matter of record. The governor, then, would not be very likely to make a removal without sufficient cause, when all the circumstances must become a matter of public notoriety.

Mr. TRAIN, of Framingham. If I rightly understood the effect of the amendment offered by my friend over the way, I suppose the object sought to be attained is one which every one will acknowledge is a proper one to be accomplished. But if I understand the effect of it, as offered by the gentleman for Manchester, (Mr. Dana,) it will be to place it in the power of the executive, the day after a sheriff, or clerk of a court was elected by the people, to suspend one of these officers, to hold him suspended, and to keep the office filled by his own appointment during the entire three years. For it is left at the option of the governor and council to try him or not, as they please. Now, suppose the clerk of a court refuses to enter up a judgment to suit me, and I go to the governor and file a charge against that clerk, that he did not enter up a judgment as I wanted him to. Thereupon he is suspended by the governor until the council try him, and they will try him just when they get ready; but in the mean time, the office is filled by the governor. I would not give the governor any such power. I think if there is a vacancy in the office of clerk of a court, it should be filled by the court itself, but it is too late to discuss that now.

Mr. DANA. I will remark that I wish the Convention had provided that vacancies occurring in the offices of the clerks of the courts, should be filled by the courts themselves. But they have otherwise provided.

Mr. LORD, of Salem. I desire to ask, as a matter of order, whether this precise resolution has not been once acted upon and rejected, by the Convention?

The PRESIDENT. The Chair thinks not. It is, however, too late to raise the question of order now. The resolves have been received, read a second time, and the question is on their final passage.

Mr. LORD. I do know how that may be, for I was not present a portion of the time yesterday afternoon, but just such a proposition was reported by the gentleman from Lenox, (Mr. Bishop,) from the Committee of which he is chairman. It provided that the governor should have power to remove all those officers which are mentioned in the resolve now before us. That resolution was rejected, by an almost unanimous vote of the Convention, and I submit that this resolution could not regularly have been introduced. If, however, it has passed to a stage where the point of order cannot be made upon it, I have nothing to say.

Mr. DANA, for Manchester. I will remark to the gentleman from Salem, that this is quite a different provision from that reported by the gentleman from Lenox, (Mr. Bishop). That gave to the governor the unqualified power of removal. This gives the governor, by and with the advice of the council, the power to remove them upon certain conditions.

Mr. LORD. The resolution before the Convention, to which I have reference, is the following:—

3. *Resolved*, That the Governor, by and with the consent of the Council, may at any time, for cause shown, remove from office, Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District-Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices of Police Courts: *provided, however*, a copy of the charges upon which said removal is made, shall be furnished to the party to be removed, and a reasonable opportunity given him for defence.

In document No. 104, you will find reported from the Committee on the Secretary, Treasurer, &c., the following:—

2. *Resolved*, That it is expedient so to amend the Constitution, that the Governor may remove any officer in the former resolves of this Committee mentioned, within the term for which he shall have been elected, giving such officer a copy of

the charges against him, and an opportunity of being heard in his defence.

The PRESIDENT. The resolves are not the same. The gentleman will find certain officers mentioned in one resolution that are not mentioned in the other.

Mr. LORD. Certain officers are named in one of the resolves, and the other refers to former resolves, where the same officers are named.

The PRESIDENT. The Chair is of the opinion that they are not the same resolves, and that they are in order.

Mr. CHAPIN, of Worcester. The resolve to which the gentleman from Salem refers, contained in document No. 104, was committed, along with others, to the Select Committee, of which the gentleman from Boston, (Mr. Stevenson,) was chairman. That Committee struck it out in their Report. I submit, therefore, that the Convention has not taken any action upon it, which, by the rules of order, would prevent it from being introduced again.

Mr. LORD. If it is too late to raise the point of order, of course I have nothing to say. I however desire to say a word upon the amendment of the gentleman for Manchester, (Mr. Dana). If I understand the effect of that amendment, it is this: Whenever anybody sees fit to make a charge against an officer they do not like, and who is of different politics from the governor then in office, they thereupon present their charge to the governor, and the governor, thereupon, enters the charge upon record, suspends that officer, and appoints somebody else in his place. I want to know if that is not the meaning of this resolve? Has not the governor the power—as soon as one of these officers, elected by the people, comes into office, if anybody sees fit to object to him—to place that objection upon the record, and then suspend that officer just as long as he pleases?

A MEMBER. Only in cases of insanity.

Mr. LORD. If it is only in cases of insanity I will go for it. Still, there is a class of unhealthy politicians who are considered insane, and that may be considered good reason, perhaps, for suspending them.

Now, I submit, Mr, President, that if the Convention understand this resolve, or this amendment, they will not pass them. It is not necessary to make an argument against them. It is only necessary for the Convention to understand their effect, to reject them. But, Sir, I will not take up the time of the Convention upon the subject.

Mr. DANA. I wish the Convention to understand this matter. The governor has always had the power to remove these officers for cause shown. We only make the same provision with regard to sheriffs, clerks of courts, &c., which has been made before. Indeed, we place restrictions upon the power of removal, which are not contained in the present Constitution.

Mr. LORD. My objection is not that there is a power of removal. The governor has heretofore had an unlimited power to remove the officers of his own appointment, and, I think it is perfectly proper that he should have that power; but now it is proposed to give him the power to remove officers appointed by the people. It is that to which I object.

Mr. DANA. Does the gentleman say the governor ought not to have the power to suspend these officers?

Mr. LORD. I think the governor ought not to have power to remove or suspend an officer the people have elected.

Mr. DANA. But suppose he is insane?

Mr. LORD. I would provide a remedy.

Mr. DANA. What is it?

Mr. LORD. I would not leave it to the governor to remove him.

Mr. DANA. I do not think the objection holds good at all. The governor has always held that power. But this limits it. The governor and council are not to remove except for cause shown, and that cause must be noted upon the records of the council. Notice must be given to the party himself, and he has the right to be heard in his own defence. Now, I put it to the good sense of gentlemen, whether it is at all probable that the governor would remove, without good cause, an officer whom the people had chosen, on written charges, with published proceedings? The people have the right to fill the vacancy every year. The appointee of the governor can hold only until the next general election. Now, Sir, while the governor must give notice to the officer himself, of the charges against him, and place the same upon record, I ask if he would dare to remove an officer the people have chosen, except for good cause? But if gentlemen are much afraid to trust the governor, I am perfectly willing the causes for which he shall be removed shall be specified in the resolve.

I move, therefore, to strike out in the second line the words "cause shown," and to insert the words, "incapacity, misconduct, or maladministration in office," so that the clause will read:—

*Resolved*, That the Governor, by and with the consent of the Council, may at any time, for incapacity, misconduct, or maladministration in office, remove from office, &c.

Mr. MORTON, of Taunton. The Committee

on the Judiciary gave some considerable attention to this subject, and they came to the result which is stated in this resolve. It may be open to objections—perhaps sound ones, certainly it is open to plausible ones. But, I think it must be obvious to every one, that some provision is necessary to provide for the removal of these officers. Here are a large number of officers chosen by the people. Some of them may become incompetent to perform their duties. There may be cause from insanity. There may be cause from absence from the Commonwealth. There may be cause from unfaithfulness and intentional violation of duty; and the public good seems to require that you should have somebody to act in this matter. It seems almost a matter of necessity that some of these officers should be on duty all the time. For instance, if the clerk of your courts, your sheriff, your register of deeds, or your register of probate, from any cause become unable to perform their duties, it seems almost indispensable that somebody should be authorized to displace him, and to appoint some one else to perform his duties. And, although I approve highly of the vigilance which seems to be shown in guarding the power you confer upon individuals, and especially in cases of removal, yet I do not believe that in cases of this kind there is any great danger of abuse. So long as the governor himself is elected by the people, and is required to place upon record the causes for which he removes an officer, I do not believe there is any great danger of his removing, without sufficient cause, officers who are chosen by the people.

I do not believe it is wise to define precisely the cause or the act for which an officer shall be removed. If we do, we shall be almost sure to omit certain causes for which they ought to be removed, and thereby exclude them. I think we ought to have the matter discretionary as much as possible. I do not know how we can limit or classify the causes for which an officer shall be removed, without involving ourselves in difficulty. The learned and astute gentleman for Manchester, (Mr. Dana,) is as competent as any one to make such a classification; and he has provided, among other things, incapacity, as a cause of removal. Now, we shall perhaps never have an election where one party will not charge the candidate of the other party with incapacity. They will charge that he is incompetent to perform his duty, and upon this ground the governor would have the power to turn him out of office. I repeat, I like vigilance in guarding the power which you confer upon individuals; but, it seems to me, if you undertake to limit the causes for which these officers may be turned out of office, you will not make the power any more safe from abuse, but, on the contrary, if there is danger, you make it more dangerous.

Mr. PARSONS, of Lawrence. There is a portion of the amendment to which I am entirely opposed, since we have made a portion of the officers elective, to whom this resolution is to apply. I have no great objection to the officers being elected; but since this Convention has thought proper, by a large majority, to make certain officers elective who have formerly been appointed by the governor, and have left that matter entirely to the people, I think it would ill become us to put in that amendment, especially that part of the amendment which says that when an officer becomes incompetent, and is not capacitated to discharge the duties for which he was elected, he may be suspended. I say, it will give an opportunity throughout this State, for various political parties to get up petitions in towns, counties, or districts, signed by hundreds, to be brought before the governor and create a disturbance, and interfere with the rights of the people. Now, what will that word "incapacity" mean. It means nothing more than this: that when it becomes necessary to send a petition to the governor, it will be argued by those persons who represent the petitioners, that that person is incapable; that he is incapable in a thousand different ways, not from being insane, or from malfeasance in office, but in an intellectual view, to perform the duties for which he was elected. I say the governor has nothing to do with it; and, to my mind, it is highly improper that such an amendment should be passed, for we have intrusted their election to the people, who are to judge whether a man is capable to perform the duties for which he is elected. Will not the people know the man for whom they vote? I want to know if they are not the best judges. Most assuredly they are the best judges. They have the sole right to judge, and as has been argued for weeks past, with regard to vested rights of the people, I will say, that so far as the vested rights of the people are concerned, I am not one of the sticklers for their rights in Massachusetts. I have no fear with regard to their rights. I have always, since I have been a voter, especially in the State of Massachusetts, thought that the people are capable of taking care of themselves, and of their own rights, and that they will do it. But, I say, we are not the judges whether a man is capable of performing the duties of an office to which the people have chosen to elect him. I hope we shall not make a farce of this matter, since we have said that it is not proper to give to the people the right to elect judicial

officers. This proviso, if adopted, will only make dissension which will array hostile parties against each other, by filing petitions on different sides, and they can bring an array against almost any man.

I want to ask the reformers in this Convention if they intend to oppose our taking these officers from the farmers, when we come to elect them by the people, or from any other class of people from whom we may choose to take them. I say that petitions may be sent in with regard to district and county officers which may require weeks in order to decide whether the man who has been elected by the people is competent, intellectually or morally, for holding the office to which he has been elected. I hope the resolution will not pass.

Mr. WALKER, of North Brookfield. I am sure that the resolution, as it has been amended, must commend itself to the good sense of the Convention. It is very evident to my mind that this power should be deposited somewhere; and in placing it in the hands of the governor, with these restrictions, there is no danger. I hope it will be sustained. It is very evident that nothing would be more unpopular or unwise, than for a governor to remove a man who had been elected by the people by a large majority. The very fact that he had been removed would insure his re-election. I cannot see the least danger to be apprehended in intrusting the governor with this duty.

Mr. KEYES, for Abington. It may appear a little immodest that I should imagine that I could do anything to extricate ourselves from this state of confusion; but if the gentleman for Manchester will listen to me, I will try. I will start in the first place, by saying, that I think that the amendment with regard to cause being shown, &c., is very proper, but that the latter part of the amendment is unnecessary. I am in favor of having a power of removal somewhere. But the reason for appointing some one in the place of the person removed, I think unnecessary. If the crime charged against an officer is of an extraordinary character, so that it unfits him at once for the discharge of the duties of his office, the governor and council can discharge him at once. Therefore there is no danger in having this stand as it does now, that a copy of the charges shall be furnished to the party, so as to give a reasonable opportunity for a defence.

Now if a man dies, and a vacancy occurs in that way, it is provided for in the fourth resolution. The time to be occupied in deciding a case need not be longer than in the case of filling a vacancy when a man dies, even if you give a copy of the charges and allow the accused to appear. And if the case is so extraordinary, and the person is so very guilty that he should not hold his office one hour, the governor and council can settle it in an hour; and therefore a vacancy will then occur. The officer being removed, there is a provision in the fourth resolution for filling that vacancy.

Now let us look at the character of these offices and see how important it is that in every minute of time there should be some one in office. Take the office of sheriff for example. Suppose he dies, or is taken insane suddenly; he has his deputies to perform his duties. I take it the deputy is simply a substitute for the sheriff.

Mr. BUTLER, of Lowell. I wish to suggest to the gentleman for Abington to consider that the moment the sheriff dies, the deputies all die with him. It is just as soon as that.

Mr. KEYES. That does not affect this case at all. If there is a charge of maladministration, he is alive then and his deputies are living with him, and the duties may be performed, as they are in many cases, by the deputies themselves. The idea which I wish to convey to the Convention is, that the time required to appoint a new officer is just the same as to try him, provided the case is so desperate that there would be danger to the community to have him remain. For instance, the council can be summoned, and he must appear immediately to show whether it is a desperate case or not, and if it is an extraordinary case he can be removed at once, and then as a vacancy will have occurred, that vacancy can be filled in the manner provided for in the fourth resolution.

So in the case of a register of deeds; he always has his assistants, and it is not necessary that his own hand should make the record of the hour when it comes to his office, in order to make it legal. Therefore the difficulty is no greater than if a man were dead. It seems to me, therefore, that all the power may be given to the governor and council that need to be given for the removal, with the provision which is now here, that a copy of the charges shall be sent to the officer and he may be allowed to appear before that council. Because he may hold on still, and the prosecution can go on; and in the mean time, it is not probable he would do any more mischief; and if the case was a desperate one he could be removed at once, and the vacancy filled according to the provision of the fourth resolution.

It seems to me, the third resolution may be left to stand precisely as it is, except with regard to the amendment proposed, that for cause shown, &c. Then you have all the safety you can desire. There should be some place of power somewhere,

to remove an officer, and there is no place for it better than with the governor and council themselves. But they are elected annually, and they would not discharge a man elected by the people without sufficient cause. Now, to do away with that objection of putting the whole power into the hands of the governor to suspend him and appoint a new one, these charges against an officer can be preferred against him and a copy given, and the question settled as soon as the council can be called together. If it is such a doubtful case that the man is not so great a rascal, then the order may rest there for a while. It strikes me that this will avoid all difficulties, and that the first amendment of the gentleman for Manchester settles the whole thing.

The question was then taken on each clause of the amendment separately, and they were both adopted.

The question was then taken on the final passage of the resolves, as amended, and they were passed.

*Question of Order.*

Mr. DAVIS, of Plymouth. I wish to inquire whether it will be in order to offer a resolution now.

The PRESIDENT. The gentleman can submit a resolution by leave of the Convention.

Mr. DAVIS. There was an order, in the early part of the session, offered by the gentleman from Natick, which was referred to the Committee on appointing the governor by the legislature. By some mishap, the Committee have not acted upon it, or if they have acted it has not been put into the Orders of the Day. I wish to offer a resolution as a substitute for the order sent the Committee by the gentleman from Natick.

*Resolved*, That the Constitution be so amended as to provide that no member of the Senate or the House of Representatives, who shall have taken his seat therein, shall, during the year for which he was elected, be appointed by the Governor to any office, commission, or trust, which shall have been created, or the emoluments of which shall have been increased by the Legislature, during said year.

I ask leave to offer this resolution, because I suppose it will not create any debate, and so far as I can learn, it is unanimously the opinion of the members of the Committee that such a resolution should be inserted in the Constitution. We have a provision of this kind in the Constitution of the United States, and a similar provision has been adopted by the Convention with regard to the Council.

Mr. HALE, of Bridgewater. Before this resolution is received, I wish to state that that order to which the gentleman has referred, was considered by the Committee, and, I believe, it was almost the unanimous opinion of the Committee, that no action was necessary on the part of the Convention. I believe the gentleman from Plymouth was present at one meeting when it was considered expedient to have such a resolution; but at a subsequent meeting, when he was not present, it was decided inexpedient.

The PRESIDENT. If the Chair understands the gentleman from Plymouth correctly, this subject has been referred to a Select Committee of the Convention. It is not, therefore, in order. The proper order will be for the gentleman from Plymouth to make a motion that the Committee be instructed to report at a given time.

Mr. HUNTINGTON, of Northampton. It seems to me it is altogether too late to introduce a proposition of that character. It seems that the subject has been referred to a Committee, and that there is a division of opinion in that Committee. Owing, therefore, to the lateness of the session, and the probability that the subject must create a debate, I move that the subject be laid on the table.

Mr. WHITNEY, of Boylston. I hope that motion will prevail. I want to leave a little something for the next Constitutional Convention to do. I hope that we shall not do everything at this time.

The question being then put on the motion to lay upon the table, it was agreed to.

*Terms of Office.*

Mr. MORTON, of Taunton. I wish to inquire whether the resolves from the Judiciary Committee have been finally passed. I have been obliged to be absent for a few moments.

The PRESIDENT. They have been passed.

Mr. MORTON. Then, Mr. President, I feel it to be my duty to move a reconsideration of that vote, for a special purpose, which I will state; and if the purpose which I am about to state, meets the approbation of the Convention, they will doubtless reconsider the vote by which the resolves were passed, in order that I may introduce a certain amendment, which I will read before I ask action on the motion to reconsider. It is not for the purpose of rejecting anything that has been adopted, or modifying anything, but for the purpose of introducing an additional resolve, which the Committee on the Judiciary did not feel itself authorized to do, under the special commission under which they last acted. Gentlemen of the Convention will recollect, that we have provided for the election of a great number of officers, but we have not fixed the term of

those offices. We have fixed the tenure, but we have never fixed the term at which their duties shall commence. At present, some of them commence at one season of the year, and some at another. Now if they are elected in November, it seems to me that it would be better to have them commence at a uniform period to enter upon their duties. As it is now, the county commissioners enter upon the duties of their office at one period, the registers of deeds at another, and county treasurers at still another. The Committee have deemed it expedient to have the terms of all the offices commence at the same time. If this meets the approbation of the Convention, I hope they will reconsider the vote by which they passed the resolves, so that I may have an opportunity to offer an additional resolve, as an amendment, which I will now read :—

*Resolved*, That the terms of all elective officers provided for in this Constitution, shall commence on the first Wednesday in January next after their election.

The PRESIDENT. If there be no objection, the Chair will consider the question on the final passage of the resolves as not having been put to the Convention. The Chair understands that no objection is made. The question will therefore now be on the final passage of the resolves.

Mr. MORTON. I now offer the amendment which I read to the Convention.

Mr. HALE, of Bridgewater. I want to inquire of the gentleman from Taunton how that would operate in the case of a vacancy filled by an election in the interim—whether in that case the term would have to commence on the first Wednesday in January following. Suppose the vacancy is filled in May, is the office to remain vacant until the next January before the term will commence ?

Mr. MORTON. The amendment was written in some haste ; but that was not the intention, at any rate. If there is any oversight in the form of the resolution, the Revising Committee will put that right.

Mr. BUTLER, of Lowell. If I understand this matter, we have already passed a resolution that all these vacancies shall be filled at the annual election in November. If there is a vacancy occurring in the mean time, *ad interim*, the governor appoints some one ; and of course the *ad interim* appointee would hold the office until the first Wednesday in the January succeeding, when the newly elected officer would assume the duties. There is no filling vacancies in May by elections, for all vacancies are to be filled at the annual election in November, in order to prevent the people from being called out too often.

Mr. STEVENSON, of Boston. I desire to make a suggestion, that it would be well to except representatives to the general court, for the reason that they may be chosen during the session of the legislature, upon precepts.

Mr. MORTON. This does not apply to vacancies. This resolve fixes the time when the terms of office shall commence. It says that the terms of all elective officers shall commence on the first Wednesday in January next after their election, and of course they hold their offices until the first Wednesday in the January following. If a vacancy occurs in the meantime, there is a provision made in another resolve how that temporary vacancy shall be supplied until the next election.

Mr. STEVENSON. I should like to have the resolve read again.

The resolve was accordingly read.

Mr. STEVENSON. The language of the resolve is, that the terms of all elective officers provided for in this Constitution, shall commence on the first Wednesday in January next after their election. Now, suppose a member of the general court is chosen by precept in April, 1854, the first Wednesday in the January next after his election will be the first Wednesday in January, 1855, and another election will then have intervened.

Mr. MORTON. My construction of the language there used, which I admit was not very carefully considered, was, that the regular term of office shall commence on the first Wednesday in January, and shall continue until the first Wednesday in the next January. If there is a vacancy, it does not affect the term of office ; in that case, the term of office would be occupied by two individuals, or it may be, by three or four. In order to meet the difficulty suggested by the gentleman from Boston, I will modify the resolve, by adding after the word "Constitution," the words "except members of the legislature," so that it will then stand as follows :—

*Resolved*, That the terms of all elective officers, provided for in this Constitution, except members of the legislature, shall commence on the first Wednesday in January next after their election.

Mr. MOREY, of Boston. I will inquire whether this applies to the election of governor and lieutenant-governor, and officers which are in some cases to be chosen by the legislature.

Mr. MORTON. It is already provided that their terms shall commence on the first Wednesday in January.

Mr. MOREY. Oftentimes it is the case that they are not chosen until sometime in the latter part of January.

Mr. OLIVER, of Lawrence. I wish to make an inquiry with regard to that amendment. I understand that the terms of all officers who are to be elected under this Constitution are to commence on the first Wednesday in January. Suppose I should be elected a military hero about the first of September, I want to know if I am to go without my commission until the next January? That would spoil all the beauties of our militia system.

Mr. HOOPER, of Fall River. I would suggest that in order to accommodate the gentleman from Lawrence, the word "civil" be inserted, so as to leave out all uncivil officers. [Laughter.]

Mr. OLIVER. That would be "doing the civil thing," I grant; but I hope it will not be considered that the military are uncivil.

Mr. HOOPER. Not at all.

Mr. MORTON. Mr. President: We have labored so long here in trying to improve our Constitution and to make it perfectly correct in every respect, that we have grown amazingly critical, and I shall expect that everything that passes the ordeal here will bear the test of criticism as well as of legal and constitutional propriety. Endeavoring to profit by the suggestions which have been made to me from various quarters, I have made a little modification of my amendment, which I will state now, and I hope that gentlemen will be so kind as to suggest any improvements that it may require before I offer it formally, and after they have exercised their critical acumen upon it, I will substitute it for my other proposition, and hope that no objection can then be made to it. I propose to strike out the words, "except members of the legislature," and insert, "not otherwise" before the words "provided for," so that it will read:—

*Resolved*, That the terms of all elective officers not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.

If that does not cover the whole ground, I should be very happy to learn what the exceptions are.

Mr. HALE, of Bridgewater. I hope the gentleman from Taunton will not suppose that I objected to his amendment for the purpose of criticism; it was only because I thought there was a defect in it that ought to be remedied. I have no desire to criticise the reports which are presented here by any member of this body.

The amendment, as modified, was agreed to, and the resolves, as amended, were finally passed.

*Distributing the New Constitution—Reports of Debates, &c.*

Mr. WALKER, of North Brookfield. An order was passed this morning that one hundred thousand copies of the present Constitution of this State, together with the new Constitution to be submitted to the people, should be published in the same manner with the general laws and resolves, and distributed to every family in the Commonwealth. I find that the present Constitution has already been published and is now in process of being distributed. I hope, therefore, that the vote by which this order was passed will be reconsidered, for it will be entirely unnecessary and involve a waste of the public money to have the present Constitution printed again, as is proposed. I move a reconsideration of that vote.

The motion was agreed to, and the question recurred on the adoption of the order.

Mr. WALKER. I move to strike out the words, "the present Constitution of the State, together with."

Mr. HALE, of Bridgewater, thought that it would be well to have both Constitutions sent out together, so that the people could have a better opportunity to compare them.

Mr. TRAIN. I wish to inquire of my friend from North Brookfield if he proposes that one hundred thousand copies shall be given to each family in the Commonwealth.

Mr. WALKER. That is not the language of the order.

Mr. TRAIN. I should like to hear it read, as he proposes to amend it.

The order was read, as follows:—

*Resolved*, That one hundred thousand copies of the new Constitution to be submitted to the people, be published in the same manner as the general laws and resolves, and distributed to every family in the Commonwealth.

Mr. BIRD. I should like to know whether the gentleman has ascertained that there are exactly a hundred thousand families in the Commonwealth, among whom these are to be distributed.

Mr. WALKER. Year before last, we published ninety thousand copies of the laws, and last year we published one hundred and sixty thousand copies, because there was a larger demand than usual, as they filed them away in all the lawyer's offices, where there was a great call for them. I supposed one hundred thousand copies would be sufficient.

Mr. BIRD, of Walpole. I beg to inform the gentleman from North Brookfield, that there are two more families in my neighborhood this year, than there were last. [A laugh.]

Mr. WALKER. Of course, the number of copies can be increased without much expense.

Mr. HALE, of Bridgewater. If the gentleman from North Brookfield has no objection, I will offer an amendment to his proposition—to add the following words: "And one copy shall be furnished to each family of the Commonwealth." I think that will put the matter beyond all question.

Mr. WALKER. I will accept the amendment of the gentleman from North Bridgewater, though I insist that it is not necessary, to make good grammar. How you can make the order mean that one hundred thousand copies are to be supplied to each family in the Commonwealth, I do not know, but I accept the amendment.

The order, as amended, was agreed to.

Mr. WALKER. I will venture to offer another order. It is as follows:—

*Ordered*, That the Committee on Reporting and Printing be instructed to employ some suitable person to receive and distribute all the documents ordered by the Convention, in the manner and form heretofore directed.

It is evident that this must be done by somebody, and it is equally evident that it cannot be done by the Secretary of State. It will be a great labor to forward all these documents, and somebody must be employed to do it, or authorized to employ somebody else.

Mr. BIRD, of Walpole. I do not see any necessity for this order. If I understand it, it directs the Secretary of State, or somebody else, no matter who, to attend to the distributing of documents from the the office of the Secretary of State. I suppose that it provides also for the copies of the Reports of our Debates here in the hands of the printers. I suppose that the printers are paid to do that. You might as well employ somebody to forward all our newspapers. The gentleman says that somebody must do it. Let the members do it themselves.

Mr. WALKER. Direct their own copies of Reports, and newspapers, themselves, from the office of the printers to themselves at home!

Mr. BIRD. We were each allowed twenty-one newspapers per week—a pretty liberal allowance, as it seemed to me. Afterwards an order was passed that whoever chose, might substitute for their newspapers so many copies of the Reports of Debates. These newspapers we were entitled to during the session—but I take it that we shall take these Reports till the whole are printed.

Now, the State pays White & Potter to furnish these documents to us; and it is no more trouble to them to put them in the mail or hold them in their office, subject to our order, or till we call for them, than it has been heretofore; and I see no propriety therefore, in taxing the State to pay for the distribution of these documents. I do not know that it would be more trouble to go to White & Potter and acquaint them with the manner in which we wished these Reports sent to us, than it would be to go to a Committee. The point is this: It is the duty of White & Potter to furnish us these documents. They are paid for it, and I hope that there will be no additional expense on that account.

Mr. HOOPER, of Fall River. So far as I know there are two classes of these Reports to be distributed—those which are to be bound in octavo size, and those which are unbound. The Convention ought to provide some mode for the distribution of these as well as the journal. Those which have been taken in lieu of newspapers, the members will take care of, themselves. I do not agree with the remark of the gentleman from Walpole that the order would only entitle us to receive these Reports during the continuance of the session, for the reason that a Prospectus was sent out offering the whole Reports for a certain price—the price about which a daily newspaper would cost—and a resolution was offered allowing each member to take a copy of these Reports in preference to a copy of a newspaper. There is, therefore, no additional expense to the State in the number of copies of these Reports that have been taken. I think that each member should arrange with White & Potter in the manner they have contracted for; and it seems to me to be proper that those copies of the Reports which are to be bound should be distributed among the members acording to an order of the Convention. I therefore think, that the order of the gentleman from North Brookfield is a proper one, and should be adopted.

Mr. UNDERWOOD, of Milford, thought that some method should be provided by which every town should have its full proportion of these Debates, in order that the inhabitants of the State might see what the Convention had been doing.

Mr. MARVIN, of Boston, said he understood that the contract with White & Potter was for three thousand copies of these Debates, of which, fifteen hundred copies thus far had been delivered to the Convention, and fifteen hundred would remain to be distributed. The contract did not involve the distribution of the remaining fifteen hundred copies.

Mr. WALKER, of North Brookfield, was clearly of opinion that somebody should have charge of this business. In the first place, there was the ordinary Journal of Debates which was to be sent to each member; then there was the octavo edition of the Reports to be distributed.

Then there were a hundred thousand copies of the Constitution to be sent out, and it would certainly be necessary to employ somebody to do all this. He considered that the resolution was indispensably necessary.

Mr. EARLE, of Worcester, was of opinion that before the Convention provided for the distribution of these documents, some measure should be taken by which a degree of justice should be done to members in relation to the copies of the Reports of Debates. He understood, that according to a certain order passed by the Convention, every member was entitled to subscribe for certain copies of these Reports—instead of so many newspapers to which he would otherwise be entitled. That privilege had been taken advantage of to such an extent—some members not taking any newspapers, and consequently taking twenty-one copies of the Reports—that there were not now copies sufficient to supply the members. After the first edition was exhausted, there were about one hundred members who were left without any copies whatever. So that, as the matter now stood, certain members who had taken advantage of this order, were entitled to twenty-one entire copies of this work, while one hundred other members who were entitled to the same number of copies, would not be allowed a single copy, because the edition was exhausted.

He had, however, prepared an order which would, to some extent, obviate that difficulty, and would entitle such members as had not been supplied with the quarto edition, to receive three copies of the octavo edition. Until that matter was placed right, he did not think that the Convention ought to take any order in regard to the farther distribution of these Reports. At any rate, he did not think that the State ought to be put to the expense of distributing these Reports, when a part of them belonged to other members. He understood that the messenger had taken the names of those gentlemen who had ordered each twenty-one copies, so that he might distribute them according to their several orders. But it seemed to him, (Mr. Earle,) that if the Convention had not already given the messenger authority to do this work, the Convention should take the matter in hand, so that justice might be done, and that each member might receive at least, two or three copies of the octavo edition.

Mr. SCHOULER, of Boston, said he did not know how this difficulty was to be overcome. He had subscribed for ten copies, and intended to have them, having promised them all to friends, except one copy for himself.

Mr. BIRD, of Walpole, said he had subscribed for five copies, and could not get them.

Mr. MORTON, of Taunton, had subscribed for three copies, and could not get one.

Mr. SCHOULER. Perhaps that may be my case. I supposed that I was going to get ten copies. I confess I do not see how we can arrange it, very well.

Mr. BIRD, of Walpole. It seems to me that we are getting along pretty fast in voting money in this way, and I want to suggest that the better way to settle all these questions would be to refer them to a Special Committee. I move that the order now pending be referred to a Special Committee. I think it not improbable that such a Committee, could, in twenty minutes, report some plan which would satisfy the whole Convention.

The motion to refer the matter to a Special Committee was agreed to.

Mr. EARLE, of Worcester. I will now offer the order which I had prepared, and move that it be referred to the same Committee. This is the order:—

*Ordered*, That such members of the Convention as elected to take one or more copies of the official Reports of Debates, &c., instead of newspapers, to which they were entitled under the orders of this body, but who are unable to procure the same in consequence of the deficiency of the number provided, be entitled to receive the same number of copies of the octavo edition, not to exceed three copies in the whole, to any one member; and the Messenger is hereby directed to furnish said copies in addition to those already ordered to be furnished to the Convention.

Mr. EARLE. I would say that the Convention have already ordered fifteen hundred copies of the octavo edition to be printed. The expense of printing that, is no more than that of the quarto edition. It will not, in any contingency, add anything to the expenses of this Convention, because they are already ordered, and are to be paid for at any rate. But there will be more copies than will be required under the order for that edition, and those copies which are not taken by members under that order, will be left to be distributed years hereafter by the members of the Council, to themselves, their friends and others. By this resolve, we shall do some measure of justice, though not a full measure of justice, to those who were not the first to enter their names for copies, and at the same time we do no injustice to the State or to any one else. I move that the order be referred to the Special Committee already ordered.

Mr. LELAND, of Holliston. I wish to inquire of the gentleman, if the intention of his resolve is that those who have not received three copies heretofore, shall hereafter have them?

Mr. EARLE. It is simply to supply those members with copies who cannot obtain them under the order for the octavo edition. The whole of that edition, in consequence of some members taking so large a number—from ten to twenty-one copies—has been exhausted, and there are one hundred members of this Convention left without any. The question is, whether we will supply the twenty-one copies to the three hundred members, and leave the others without any?

Mr. LELAND. The difficulty is, that this order for copies of the Reports was passed after the order was passed respecting papers. I signed for all newspapers. Am I to have my papers continued, and have the Reports too? I think the members should all be allowed three copies of the Reports, alike. I should like the three copies, if possible.

Mr. EARLE. I understand the gentleman who has just taken his seat to say, then, that those members who subscribed for the twenty-one papers, and have got them, shall be entitled also to just as many copies as those who did not subscribe for any papers at all. My order only goes to the extent of supplying three copies of the Debates to those entitled to twenty-one papers, but who have not got them.

Mr. BATES, of Plymouth. The simple fact that the Convention have provided for the disposition of the whole fifteen hundred copies of the octavo edition, sets the matter at rest; and no order like that proposed by the gentleman from Worcester can be of any effect, unless you rescind the action of the Convention. In the first place, fifteen hundred copies were ordered to be printed and bound. Each member was to be supplied with one, and each town with one copy, and the remaining number of that fifteen hundred were to be distributed by the Secretary of State, in the same manner as the publications of the State are gratuitously distributed. Then, the Convention have voted that another fifteen hundred shall be printed and put up for sale, the proceeds of which shall be applied to defray the expenses, in part, of the reporting and printing. That disposes of that three thousand. Now, let me say, that the octavo edition is to cost some five or six dollars, and the order contemplates that each member may have three copies of those Debates, in lieu of so many weekly newspapers. I hope the proposition will be sent to the Special Committee, and it can be there discussed.

Mr. UPTON, of Boston. I have no objection to sending the matter to the Special Committee, but it seems to me that a statement ought to be made to the Convention of the facts connected with these Reports. The Convention have passed a vote to retain fifteen hundred copies for distribution. But how is it to be made? In the first place, the members of this Convention will take four hundred and twenty copies; the town clerks will take three hundred and thirty, making in all seven hundred and fifty, and there are less than one hundred copies more, to be distributed under ordinary distribution. So there will be left some six or seven hundred copies, for which no provision is made.

Now, Sir, this Convention passed an order, giving to members of the Convention liberty to hand their orders for papers, and also giving them the liberty to take one copy of the Debates, instead of a paper. Well, Sir, I should like to have some copies of the Debates. At the proper time, I made out the order, and handed it to the Secretary, and I was informed by him that my order could not be filled, that the Committee on Printing, or somebody else, had interfered. I did not see fit to bring the matter before the Convention, but I saw no reason or right why I should not have a copy or two of the Proceedings of this Convention. Here are members of the Convention who receive twenty-one copies, while I, pursuing the same course, under the same order, have not one copy. These are the facts. I say the members of the Convention who have not received their copies, ought to be entitled to one or more. I shall be perfectly satisfied to have the resolution provide for only one copy. There are a sufficient number of copies of the octavo edition to comply with such a resolution, and I think it would be better to distribute them now, to those members who have not secured a copy, than to leave them in the Secretary's office.

Mr. EARLE. I will state one fact to the Convention, which I should like to have well understood before this resolution is voted upon. There are members who are taking from ten to twenty-one copies of these Reports. If they choose to say that they will give them up, or a portion of them, then there would be copies enough to supply each member with his proportion, while the other members would not tax the State a cent for their papers. Now, if any arrangement can be made by which the proper officer can be authorized to distribute to each member not more than three copies of this Report, I shall be satisfied to leave it so; and if such an order should pass, I am willing to run my chance.

Mr. BATES. I desire, as chairman of the Committee on Printing, to say a single word in regard to the remarks of the gentleman from Boston, (Mr. Upton). I submit it to this Convention, whose fault it was, that these members were not supplied. The Committee reported, that

in their opinion, fifteen hundred copies would be sufficient. Members had the whole matter before them, and if they wished to order more numbers, that was the time to have done it. Some have already ordered them, and others have left the matter open, intending to order them at the close of the Convention. The result is, that the numbers have been taken up. The Committee, finding that there was not a sufficient supply, and ascertaining, as well as they might, early in the session, what number would be wanted, ordered a reprint of the first edition, making it up to two thousand copies. That, apparently, would meet the demand. The matter was submitted to the Convention, and now it is said that certain members cannot get copies. Well, the Committee's attention has never been called to the subject, and nobody knows it until the end of the session. And now it is proposed to go back and reprint the whole matter, at an expense of four or five thousand dollars, or what is worse, take this octavo edition, and turn it over to the members who have neglected to supply themselves with newspapers.

Mr. WHITNEY, of Boylston. I think at the early part of the session there was a great deal of ignorance among the members as to the value of these Reports, and members did not, for a considerable time, find out the value of them. Many did not subscribe at all for them, who would have done so had they known the worth of them. I subscribed for four copies, and have obtained them. But I am willing to yield up one of the four, in order to make up the deficiency; and I hope the Committee will be commissioned to receive voluntary contributions of copies from those who have subscribed for them, and see how many they can raise in that way. I subscribe one out of my four.

The PRESIDENT. The Chair is requested to state a fact in reply to the gentleman from Boston. From information received by the officers of the Convention, he is informed that the edition is exhausted, and that they cannot be supplied unless by ordering a reprint.

Mr. UPTON, of Boston. I did not intend to make any reflection upon the Secretary of this body. Very far from that. I was satisfied with the explanation he gave me; but I do not see what the statement of the chairman of the Committee, as to what they have done, has to do with the rights of us individually. But as this matter is to go to the Committee, I should like to have those gentlemen who have subscribed for from ten to twenty copies, stand up and vote, that those who have the same rights as themselves, and have no copies, should not be entitled to them.

Mr. HOOPER, of Fall River. It strikes me that gentlemen have nobody to complain of but themselves. Turn to the proceedings of the second day of the Convention, when the subject in relation to newspapers was first brought up. I offered the following resolve, for the purpose of notifying members that they could obtain these Reports if they chose :—

*Ordered*, That members be authorized to select copies of the Reports of the transactions of this Convention, in lieu of an equal number of papers authorized by the order of yesterday, at the option of the members.

The next day, or a few days after, another order was introduced, making a copy of the Reports equivalent to a weekly newspaper. Here was an opportunity, and a notice to each member to choose which they pleased, and had they put down their names for the copies of the Debates, a sufficient number would have been ordered, and they would have received them. If they have neglected it, it is their own fault, and they ought not to complain. I think it is unjust to make up the deficiency by the distribution of the octavo bound volume, in lieu of the quarter volume unbound. I understand that to be the proposition. I should like to have justice done in this matter. Every member is sure of having one copy, by the standing order. I should like to know how many members have given orders, during the early part of the session, which have not been supplied. I hope the Committee will look at that subject and report how many orders have been given which have not been supplied. But I do not think it is right, that men who have neglected the matter until this time, should now come in and complain, when the whole trouble is attributable to their own negligence.

Mr. CHAPIN, of Webster. I think it will put an end to this whole discussion, if we will add, as an amendment to the resolution of the gentleman from Worcester, (Mr. Earle,) the words : "And that every member receiving copies of these Debates shall be required to read them." [Laughter.]

The question was then taken, and the resolution was referred to the Committee already ordered to be appointed.

The PRESIDENT appointed the Committee, consisting of the following gentlemen :—

| | | |
|---|---|---|
| Messrs. | Walker, | of Brookfield, |
| | Williams, | " Taunton, |
| | Schouler, | " Boston, |
| | White, | " Quincy, |
| | Phinney, | for Chatham, |
| | Parsons, | of Lawrence, |
| | Bird, | " Walpole. |

*Law Martial.*

Mr. STETSON, of Braintree, moved to take from the table the resolve of the Committee on the Bill of Rights, on the subject of the Law Martial.

The motion was not agreed to.

*Reconsideration.*

Mr. STETSON then moved to take from the table the motion of Mr. White, of Quincy, to reconsider the vote by which the resolve upon the subject of the House of Representatives was passed.

The PRESIDENT said the papers were in the hands of the Committee on Revision.

After an interval of half an hour, there being no business before the Convention,

Mr. DAVIS, of Plymouth, asked if it would be in order for the minority of a Committee to make a Report.

The PRESIDENT replied in the negative, but said the minority of a Committee might make a statement of facts.

Mr. DAVIS. Then I desire, upon the part of the minority of the Committee of which I am a member, to make a statement of facts.

The PRESIDENT. There is no question before the Convention. A Report of a Committee must be in writing; but the minority cannot report, unless their Report accompanies, or is preceded, by that of the majority. The gentleman can move to instruct the Committee to report, if he chooses.

Mr. DAVIS. I ask the leave of the Convention, to make a Report upon the part of the minority of a Committee. A subject has been presented to them, upon which the majority of the Committee have not seen fit to report at all, and the Convention have, therefore, had no opportunity to act upon it.

The PRESIDENT. The gentleman must see that the minority of a Committee cannot report, unless that Report accompanies that of the majority. The gentleman, as a member of that Committee, or as a member of the Convention, may move to instruct the Committee to report, or he may submit a proposition; but he cannot present a Report as representing the minority of the Committee.

Mr. DAVIS. I am aware that it is not strictly in order; but I thought I might ask the leave of the Convention to present that Report. In the early part of the session, a resolve was passed on the motion of the gentleman from Natick, (Mr. Wilson,) to instruct the Committee on the Frame of Government, to inquire into the expediency of providing in the Constitution, that no member of either branch of the legislature, during the term for which he was elected, should be appointed by the governor to any office in the Commonwealth. It is a matter about which I presume there can be no difference of opinion in the Convention. I desire now, upon the part of the minority of the Committee, to make a Report upon that resolution.

The PRESIDENT. The Chair has already ruled that the minority of the Committee cannot make a Report. The gentleman had the right to move to instruct that Committee to report, and he did make that motion upon a former occasion, but the motion was not agreed to by the Convention. He therefore thinks it is now not in order to make any motion in relation to the subject.

Mr. DAVIS. I rise to a question of order. The order introduced by the gentleman from Natick covers more ground than the Report of the minority of the Committee, which I propose to present. I therefore submit that it is not the same matter which the Convention refused to instruct the Committee to report upon.

The PRESIDENT. If the order covered more ground than the Report, it covered the same ground, and the Chair therefore overrules the point of order.

[The President here vacated the chair, temporarily, and it was occupied by Mr. Hillard, of Boston.]

*Resolution of Thanks to the President.*

Mr. BRIGGS, of Pittsfield. I rise, Sir, to perform an act of courtesy usual upon such occasions, to the presiding officer of this Convention. I am informed that the parliamentary usages of the body which for more than half a century has assembled in this venerable hall, makes it proper for me to do it, and I do it with pleasure. I do it at this time, Sir, because it will be necessary for me to leave town this afternoon. The other part of the ceremony will be done upon the proper occasion.

Mr. President: before sending this resolution to the Chair, allow me to say, that the work which the people sent us here to do, is almost completed. We are soon to return to that honored constituency whose servants we are, to render an account of our stewardship. As an organized body, constituted for a specific and important purpose, we shall soon be dissolved into our original element.

> "Like bubbles on the sea of matter borne,
> We rise, we break, and to that sea return."

But, Sir, that great sea of humanity, what we call the people, will continue to heave and roll its deep waves forever. The muse of history, through

the medium of these truthful reporters, has written down our words. These faithful secretaries have recorded our acts, and the recording angel has carried to the court of Heaven, and placed upon its records, the motives by which we have been actuated. These are all sealed up to us, for the judgment of the great day. Whether right or wrong, they now belong to our past history, and we must stand by them in future judgment. To those who have been associated together as we have been, in common labors and responsibilities, the moment of separation is one of intense interest. After weeks and months of daily official and personal intercourse, we look into each others faces, many of us, for the last time. For the last time we have felt the grasp of friendly hands, and for the last time heard the tones of pleasant and cheering voices.

Now it is that the excitements and agitations of political differences, clashing opinions, and stirring debates, are subdued and hushed, and the kindlier and better feelings of our nature gently swell up and take possession of the heart. It should be so —I am glad it *is* so. The partisan is lost in the man—the antagonist disappears and we look upon a brother.

I am sure these generous feelings at this moment animate the breasts of the four hundred delegates now before me listening to my poor words. I hope no one of us will carry from this place any unfriendly feelings towards any other one. It gives me great pleasure to say that I have never seen a session of a large deliberative assembly pass away with such general and uniform courtesy, decorum, and propriety of conduct, as has been observed in this body. Without extending these remarks, permit me to add that I look upon these intelligent and manly faces, and I fear upon many for the last time, with no emotions but those of regret, respect, and good will. I shall carry away with me no ruffled or irritated feelings towards any member of this honored assembly. The interest of this moment of separation, to my own mind, is deepened, by the fact that I neither wish or expect, ever again to be a member of any deliberative body, whilst I live.

The general health which has prevailed amongst us, is a subject of profoundest gratitude to God. Of the four hundred and twenty delegates elected to this Convention on the seventh of March last, there has been but one death. It is sad, indeed, to reflect, that "we are not *all* here." We shall soon return to our homes, and greet and be greeted by the voice and hand of affection and love. But there is one lonely mansion made desolate by the death of one of our honored associates, where no such greeting will be had. I know the sympathy of all these hearts will gather round that mournful home, and that earnest prayers will go up to the God of the widow and the orphan, that his choicest blessings may now and ever be poured out upon its stricken inmates.

I offer, Mr. President, the following resolution, which I doubt not will receive the hearty and unanimous concurrence of this Convention :—

*Resolved*, That the thanks of this Convention be given to N. P. BANKS, Jr., for the dignified, fair, and able manner in which he has presided over its deliberations.

The resolution was unanimously adopted.

Mr. UNDERWOOD, of Milford. I desire to know what is now before the Convention ?

The PRESIDENT. [Mr. Hillard, of Boston, being in the Chair.] The Chair is unable to answer the gentleman at this moment. The Orders of the Day have all been disposed of.

Mr. UNDERWOOD. I understand it is not expected that the Committee on Revision will be able to make their Report before three o'clock this afternoon. Under these circumstances, I would suggest that we take a recess until that time.

Mr. WILSON, of Natick. I think the Convention had better not take a recess for the present. I understand the Committee on Revision may possibly report in the course of fifteen or twenty minutes. I would suggest that it would be better to wait for a half an hour, and if they do not report by that time, we can then judge better to what time it will be best to adjourn.

Mr. UNDERWOOD. I understand that Committee will not be ready to report until three o'clock, but if there is any business which can be brought before the Convention, I have no wish to adjourn.

Mr. WILSON. If the Committee are not to report until that time, I would move that the Convention take a recess until three o'clock.

*Report from a Committee.*

Mr. BOUTWELL, for Berlin, from the Committee on Revision, submitted a Report, asking that the Committee be discharged from the farther consideration of a resolve referred to them, adopted by the Convention on the 30th of May, on the mode in which the governor shall be chosen by the legislature, in case of the non-election of that officer by the people.

The PRESIDENT. The question is on discharging the Committee.

Mr. BOUTWELL. I have only to say that the Committee, in the examination of the resolutions passed by the Convention, found a resolu-

tion like that just read, which was passed on the 30th of May. Resolutions were passed, subsequently, that in case of the failure of the people to elect, the House should select three out of the number of persons voted for having the highest number of votes, if so many persons were voted for, whose names should be sent to the Senate, and from these names the Senate should select one. There being an apparent conflict between the two resolutions, the Committee ask to be discharged.

The question was taken on the acceptance of the Report, and it was accepted.

Mr. LORD. I desire to know whether it is not necessary to suspend the rules, to reconsider a vote by which that resolve was adopted? whether having adopted a resolution, it is competent for a mere majority to reject it? I think that it is necessary, in order to prevent that resolution from going into the Constitution, to reconsider.

The PRESIDENT. The Chair is of opinion that it is not necessary, but that the action of the Convention in the acceptance of the Report at this time, is of such a kind, as may be had without a motion to reconsider.

Mr. LORD. The Committee on Revision are discharged from the consideration of that resolution, but has not that resolution been passed by this Convention? Have we not voted that it is expedient to amend the Constitution in that mode, just as much without that vote to discharge the Committee as with it? Suppose the Committee on Revision had come in, and, instead of asking to be discharged from the farther consideration of the resolution, had asked to be discharged from the farther consideration of the entire subject, and they are discharged? Then where are the amendments? They are still adopted. This resolution was adopted. That resolution stands adopted as the resolution of the Convention. Now it seems to me entirely clear, that it is our duty to reconsider the vote by which that resolution was adopted; and, it seems to me, also, that a suspension of the rules is required to dispose of it. Because, otherwise, a bare majority of this Convention can undo all that has been done, notwithstanding the rule shall not be reconsidered. I do not understand that the fact that the Committee asks to be discharged, changes the case at all, because it is just as competent for a majority of this Convention to discharge, upon a motion of any individual, as for the Committee to Report and ask to be discharged.

Mr. PARKER, of Cambridge. It appears to me, that the conclusion of the gentleman from Salem must be regarded as correct: that the action of the Convention at this time, has merely taken the subject from the hands of the Committee, so that it is again in Convention. But the question which arises in my mind, is, whether the subsequent action of the Convention, passing a resolution different and entirely inconsistent with this, does not operate as an abrogation of the previous action, in such a manner that it is not necessary to take farther action upon the subject. It would seem as though that would operate as a repeal, as annulling the resolution which the Committee are now discharged from, so that it cannot stand; and, therefore, we need not take any farther action.

Mr. LORD. When this resolution was under consideration, the question of order was raised; that it was not in order, because the Convention had acted upon the subject-matter of it. The President of the Convention then decided, that it was not a point of order; that it was not in conflict with that rule; that it was a question of consistency to be determined by the Convention. We have, therefore, determined that it was not inconsistent; because, otherwise, they would not have adopted it. They must be presumed to have decided that it was not inconsistent. If this can stand in that mode, then a bare majority, on a motion to discharge the Revising Committee from the consideration of any amendment, can defeat an amendment.

The PRESIDENT. The Chair would suggest to the gentleman from Salem, that there is no motion before the Convention.

Mr. LORD. I move that the rules be suspended, so that the resolution may be taken up for reconsideration, with a view to its rejection.

Mr. BOUTWELL. I think it that is too late to reconsider a vote taken on the thirtieth of May last.

Mr. LORD. What I desire, is, to move a suspension of that part of the rule which limits a motion to reconsider to the next day after the resolution was passed.

Mr. BOUTWELL. I suppose that, practically, whatever course we take, we shall come to the same result: that a majority of this Convention will decide whether the resolution shall stand or shall not stand. I see no other result, whether the rule be suspended or not. If the rule be suspended, and a motion is made to reconsider, that question, of course, can be decided by a majority. I think there is no principle involved in this. Here is an apparent conflict between the action of the Convention at one time, and its action at another. I think that, in fairness, we should let the action on this first resolution, subside.

Mr. LORD. I think that in all fairness we

should stand by this which we understood to be the well defined view of the Convention. But at the same time, I think we should do it regularly. I do not make this motion to have it defeat the resolution, but because I wish to have the matter conducted with order, regularity, and propriety. I think that is the only course, and I made the motion myself, because I wanted to show, that, so far as I was concerned, having raised the question myself, I had a disposition to have the matter settled just exactly as it ought to be settled with propriety. I think that, in order to have it stand right, the Convention must reject the resolution. And to reject it, we must reconsider, and to reconsider, it is necessary to suspend that part of the rule which limits a motion to reconsider to the next day. If gentlemen sustain the motion to suspend, then it is in the power of the Convention to make a reconsideration, and then it is in the power of a majority to do as they please with the resolution.

Mr. MORTON, of Taunton. I see no occasion for passing this vote of reconsideration, looking back for so great a length of time as this; because I think on every principle of law and constitution, the thing stands perfectly well. Early in the session, I do not remember the date, a resolve passed this body respecting amendments to the Constitution, so that if there was a failure to elect a governor, he should be chosen by a joint ballot of the two Houses. Afterwards there was a resolution passed, that in filling a vacancy, when there was no choice by the people, the House should select three from the number of persons having the highest number of votes, and out of them the Senate should select one. This was the deliberate action of the Convention. It seems to me the whole matter is perfectly settled, because it is entirely apparent that the second resolution is utterly inconsistent with the first; they cannot both stand. One or the other is annihilated. Which is it? I believe that the rule is well settled that the last action of the Convention shall prevail, and that any subsequent action, whether of law or constitution, repeals all laws inconsistent with it. The adoption of the second resolution being entirely inconsistent with the first, was just as much a repeal of the first, or a rescinding of it, as if done in so many words. Therefore, I think the first, having been repealed, there is nothing to reconsider, that all stands perfectly well; and therefore we have no need to pass a rule allowing to move a reconsideration.

Mr. HILLARD, of Boston. It will be observed that the adoption of the resolutions referred to is simply an expression of opinion on the part of the Convention. On one occasion, the Convention voted that it was expedient to amend the Constitution in one manner, and on a subsequent occasion they voted that it was inexpedient to amend the Constitution in that manner. The Committee to whom the resolutions were referred, seeing their inconsistency with each other, ask to be discharged from the consideration of that resolution which it is understood it is wished should not prevail. Now, what is the action of the Convention to be, in case any retrograde steps are to be taken? We must first reconsider the vote by which it was referred to the Committee. Both resolutions are in their hands, unless we accept the Report. Therefore, I do not see how it is now in the power of the Convention, because, as we have accepted the Report, the Convention has no power over it until we reconsider the vote by which it was put into the hands of the Committee.

Mr. LORD. The Convention has discharged that Committee, as I understand.

The PRESIDENT. The papers are not in the possession of the Convention at present. The motion to reconsider is not necessary.

Mr. LORD. I would ask if it would be competent for a bare majority to discharge a Committee from any other branch of this subject, and thereby defeat the amendment which has been already passed?

The PRESIDENT. The Chair is not to give opinions in advance, but will rule upon cases as they occur.

Mr. WILSON, of Natick, moved that the Convention adjourn, to meet at three o'clock this afternoon.

Mr. BRIGGS. I hope my friend will withdraw that motion for a few moments.

Mr. WILSON withdrew it.

Mr. BRIGGS. I wish to state to members of the Convention, that our friend the Chaplain has been desirous, during the session, to have half an hour at some time, to speak to us upon the subject of education, in its various forms. There is now more than half an hour before the earliest time when we have been in the habit of adjourning; and I would respectfully request those gentlemen who have not duties elsewhere that call them away, to remain after the adjournment, and listen to what he has to say. It will be but a short address.

Mr. BUTLER. There is now no other business before the Convention; and knowing that it is nearly impossible to get the Report of the Revising Committee here at an hour sufficiently early to enable us to deal with it this afternoon, and that therefore it will be necessary for us to have

a session on another day, I move that when the Convention adjourns to-day, it adjourn to meet on Monday morning next, at ten o'clock.

The motion was agreed to.

*Pay Roll.*

Mr. LIVERMORE, of Cambridge. I wish to make a statement in relation to the pay roll. The pay roll is now made up, with the exception of one name, and the governor and council will be in session at one o'clock to-day. The governor, and some members of the council, have engagements on Monday, and will not be able to be here on that day to draw warrants, if the Convention should adjourn until Monday without having a session this afternoon. The pay roll is made up, and ready to be passed upon, and the warrants can be drawn this afternoon if we have a session; and it seems to me that it will be hardly worth while to have the governor and council come together again, which they could not do before Tuesday or Wednesday.

Mr. LORD, of Salem, moved that the Committee on the Pay Roll be instructed to make up and pay the account of Hon. HENRY WILSON, at the rate of three dollars per pay in addition to the ordinary compensation, during the time that he acted as President *pro tempore*.

Mr. WILSON. I thank my friend from Salem for his kindness in making that proposition, but I must beg leave to say to him and to the members of the Convention, that under the circumstances, I do not think it would be right or proper for the Convention either to pass this, or for me to take it. I should be sorry to have such a vote passed, and I hope that my friend will withdraw the motion. It was only for a day or two that I was in the chair performing those duties; if it had been a month or six weeks, it would have altered the case.

The question being put, the motion was agreed to.

Mr. BUTLER then moved that the Convention adjourn.

Mr. WILSON. As the governor will not be here on Monday, I think we had better meet this afternoon, and see about the pay roll.

The question being put, on the motion to adjourn, it was not agreed to.

*Reconsideration.*

Mr. LIVERMORE. I move to reconsider the vote by which the Convention agreed to adjourn until ten o'clock on Monday.

The motion was agreed to.

The question then recurred on the motion that when the Convention adjourn, it be to meet on Monday at ten o'clock; and it was not agreed to.

On motion, the Convention then adjourned.

## AFTERNOON SESSION.

The Convention reassembled, and was called to order by the President at three o'clock, P. M.

Mr. WILSON, of Natick. I am informed, Mr. President, that it will be impossible for the Committee on Revision to report this afternoon, and it will be useless for us to remain here. They will be able to report on Monday, and I therefore hope that we shall adjourn now, and meet at ten o'clock on Monday.

Mr. LIVERMORE, of Cambridge. I beg leave to state to the Convention, that in the course of a few minutes the pay roll will be made up, and the Committee on the Pay Roll will be ready to make their Report. The pay roll has been made up, in pursuance of the order of the Convention, including Monday next, and the governor has summoned the council, so that they will be ready this afternoon to draw the warrants for the pay of members. The governor and some members of the council have engagements on Monday, so that they will not be able to draw warrants at that time. They have come here from a distance, some of them, for the purpose of advising the governor in relation to this matter; and it appears to me that the warrants can be drawn to-day as well as to have the matter deferred until next week. The Convention have voted that no member shall receive any pay after Monday next, and it seems to me to be wholly useless to postpone action upon the pay roll to a future time, because it is not certain that the governor and council will be in session again for a number of days; and until the warrants are drawn, the members of the Convention cannot receive their pay. I do not suppose that if the warrants should be drawn this afternoon, the members would be able to get their pay before Monday, for the office of the Treasurer usually closes at an early hour in the afternoon. I presume members could not receive their pay and leave this afternoon, nor would they wish to leave the Convention without a quorum, or without the proper number of members present to finish up the business of the session; but it seems to me that if members understand this, they will not vote to adjourn until after action is had upon the pay roll. It will be but a very short time before the Committee will be ready to make their Report to the Convention.

Mr. WILSON. I move that when the Convention adjourns, it adjourn to meet on Monday next at ten o'clock.

The question being taken, the motion was agreed to.

After a few moments, no business being presented, Mr. WILSON moved that the Convention adjourn.

The question being taken, on a division, there were—ayes, 94; noes, 67—so the motion was agreed to, and the PRESIDENT declared the Convention adjourned until Monday morning at ten o'clock.

Mr. LIVERMORE. Is it not in order to call for the yeas and nays on that motion?

The PRESIDENT. The Convention has adjourned.

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MONDAY, August 1, 1853.

The Convention assembled at ten o'clock, A. M.

Prayer by the Chaplain.

The journal of Saturday was read.

*Pay Roll.*

Mr. LIVERMORE, of Cambridge, from the Committee on the Pay Roll, submitted the following Report:—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, August 1, 1853.

The Committee on the Pay Roll, in compliance with an order of the Convention, directing them to make up the pay roll, have attended to that duty, in accordance with a resolve passed on the 28th day of June last, and report the sum herewith, amounting to $114,092, and also report the accompanying order.

For the Committee,

ISAAC LIVERMORE, *Chairman*.

*Ordered*, That the Pay Roll of the Convention, as reported by the Committee, in accordance with the resolve of the 28th of June last, and the order of July 29th, be transmitted by the Secretary, to the Auditor of Accounts, and that he be requested to obtain from the Governor a warrant upon the treasury of the Commonwealth, to authorize the payment thereof, and notify the Convention when the warrant has been drawn.

Mr. GRISWOLD, for Erving, moved that the Report be laid on the table.

The motion was agreed to.

*Personal Explanation.*

Mr. OLIVER, of Lawrence. I ask permission of the Convention to make a personal explanation. In the early part of the session, I was under the impression that each proposition submitted to the consideration of the House, would have three separate readings prior to the final action thereon, and that there would be, of course, as many opportunities for discussion and amendment. In this, I was in error, and laboring under this misapprehension, I gave a negative vote in a case in which it was not my intention so to do, on the final passage. I allude to the resolve on the secret ballot. I was very desirous of pressing the same amendments which I offered when it was under consideration, had another opportunity been offered. Voting as I did, I stand upon the record in direct opposition to my real sentiments and intentions, upon the general question. I therefore make this explanation of my affirmative intention, that I may, thereby, appear in the proper light.

*Protest in relation to Rights of Colored Citizens.*

Mr. KEYES, for Abington. Mr. President: A paper has been placed in my hands, purporting to be a protest against the action of this Convention, with the request that I would present it here, and move that it be placed upon the records of this body, if it is in order to make that motion. I will state, in a few words, what it is. It is a protest from a number of colored persons, in the name and behalf of the colored population of Massachusetts, who, claiming to be citizens of Massachusetts, under our laws, have been permanently disqualified from holding any position in the militia; which is, in fact, declaring that they are not citizens. They have stated this in very respectful language; and I will read the reason why they want this petition placed upon the records of the Convention. They say: "We respectfully ask that this protest may be placed upon the records of the Convention, and published with the proceedings of the Convention, that the stigma may not rest upon our memory, of having tamely acquiesced in a proscription equally at war with the American Constitution, with the Massachusetts Bill of Rights, and the claims of human nature." I therefore ask, in compliance with their request, that the protest may be read, and then that it be placed upon the records.

The protest was read.

The question being put on ordering the protest to be placed upon the records of the Convention, on a division, there were—ayes, 97; noes, 66—so the motion was agreed to.

*Distribution of Documents.*

Mr. WALKER, of North Brookfield, from the Special Committee, to whom were referred two orders of the Convention of July 30th, in relation to the distribution of the documents of the Convention, reported the following resolves:—

1. *Resolved*, that White & Potter be instructed to deliver, without additional charge, the remaining numbers of the quarto edition of the Journal of Debates, at such places in Boston, as the members shall respectively order.

2. *Resolved*, That each member of this Convention be furnished with one copy of the Journal of the Debates, of the octavo edition, additionally to the one heretofore ordered.

3. *Resolved*, That the Messenger be directed to deliver, without additional cost, the copies of the Debates aforesaid, together with the Journal of the Convention, heretofore ordered, with the completed file of the documents belonging to each member, at such place in Boston, as the members shall respectively order. And also to send, in the usual manner, the copies of the Journal and Debates to the towns, cities, and public bodies, as ordered by the Convention, and also to send to each town or city, its quota, in proportion to population, of copies of the New Constitution, heretofore ordered to be published.

Mr. EARLE, of Worcester. I move to amend the second resolve, by adding thereto the following words :—

*Provided*, That no member shall be entitled to more than three copies, including those received instead of newspapers.

Mr. EARLE. This Report, I presume, was made upon an order which was submitted by me, and referred to the Committee, on Saturday, the object of which, was simply an act of justice to that portion of the members of the Convention who had not been able to obtain the copies to which they were entitled under a former order; while some members have received, under a former order, as I stated on that occasion, various numbers, from ten to twenty-one copies. Now, this resolve, instead of providing for those who have not been able to obtain the copies to which they were entitled, provides that those who have received twenty-one copies, shall have three copies more, while those who are entitled to twenty-one copies, and cannot get them, shall have but three copies in all; and this is the justice which the Committee propose in that resolve. If that is to stand just as it is reported, I shall vote against the whole. I was entitled to six copies, under the former order, and other members were entitled to different numbers, which they have not been able to get. It makes no difference to me, personally, whether I get these or not. I am entitled to one copy, as every other member is, under another order, and that will satisfy all my wants; still, I had concluded to take six copies, and distribute them among some of my friends; others have got theirs, and have distributed them. My object was simply to remedy the defect, and give some measure of justice to those who had not taken their copies. I cannot imagine any reason why this resolve should be brought in as it is, giving those who have already received ten, fifteen, or twenty copies, three copies more. The other day, when I offered that order, I was met at once by the exclamation, from various quarters, that it never would do to give three copies to members who were entitled to eight or ten, because it would exhaust the treasury of the State, and besides that, it would exhaust all the copies, so that future governors and councillors would have no copies to distribute among their friends. Then, they could do no such thing; but now, it is proposed not only to give two or three copies to those who are justly entitled to ten or twenty, but in addition to that, to give those who have had ten or twenty copies already, just as many as we have. We do not ask for justice—we do not ask for what we are entitled to, under a former vote, to put us on an equality with those who have already got theirs; but if we cannot have this for which we do ask, without voting an additional number to those who have already had fifteen or twenty, I, for one, will give up what I am entitled to, and be content with the single copy that I shall get under the other order.

Mr. BOUTWELL. I move to lay this Report upon the table, in order that we may have an opportunity to consider it a little, and in the meantime proceed to the more important and pressing business before us.

The motion was agreed to.

*Revised Constitution.*

Mr. BOUTWELL, from the Committee appointed to prepare the amendments to be submitted to the people, reported a series of resolves, accompanied by a form of a revised Constitution.

The resolves were read, as follows :—

In the Convention of the Delegates of the people assembled in Boston, on the first Wednesday of May, in the year 1853, for the purpose of revising and amending the Constitution of this Commonwealth.

*Resolved*, That the revised Constitution, proposed by said Convention, be submitted to the people of the Commonwealth for their ratification and adoption, in the manner following, viz. :—

I. The Preamble; A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts; The Frame of Government, with its Preamble and Chapters numbered One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, and Fourteen, entitled, respectively—General Court,—Senate,—House of Representatives,—Governor,—Lieutenant-Governor—,Council,—Secretary,—Treasurer, Auditor, and Attorney-General,—Judiciary Pow-

er,—Qualifications of Voters and Elections,—Oaths and Subscriptions,—Militia,—The University at Cambridge, the School Fund and the Encouragement of Literature,—Miscellaneous Provisions,—Revisions and Amendments of the Constitution —as a distinct proposition, numbered "One."

If this proposition, so submitted, shall be ratified and adopted by a majority of the legal voters of the Commonwealth, present and voting thereon, at meetings dully called, then the same shall be the Constitution of the Commonwealth of Massachusetts.

II. The provision respecting the granting of the writ of Habeas Corpus, as a proposition, numbered "Two."

If this proposition shall be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

III. The provision respecting the rights of juries in criminal trials, as a proposition, numbered "Three."

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

IV. The provision respecting claims against the Commonwealth, as a proposition, numbered "Four."

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

V. The provision respecting imprisonment for debt, as a proposition, numbered "Five."

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights respecting excessive bail and fines.

VI. The provision respecting sectarian schools, as a proposition, numbered "Six."

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, "The University at Cambridge, The School Fund, and the Encouragement of Literature." If proposition numbered "One" shall not be adopted, it shall be added as an amendment to the Constitution.

VII. The provision respecting Corporations, as a proposition, numbered "Seven."

VIII. The provision respecting Banks and Banking, as a proposition, numbered "Eight."

If the propositions numbered "Seven" and "Eight" be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled, "Miscellaneous Provisions."

If proposition numbered "One" be not ratified and confirmed, they shall be added as amendments to the Constitution.

*Resolved*, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be holden on the second Monday of November, in the year one thousand eight hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within a sealed envelope according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded, in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities, shall be sealed up by said selectmen and mayor and aldermen, and directed to the Secretary of the Commonwealth, with a superscription expressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the Secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the Secretary's office, on or before the day last aforesaid.

*Resolved*, That the Secretary shall deliver said copies so transmitted to him, to a Committee of this Convention consisting of
who shall assemble at the State House on the third Monday of December next, and open the same, and examine and count the votes, so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

*Resolved*, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter may vote on each proposition by its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition the word Yes or No,—but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

*Constitutional Propositions.*

| | |
|---|---|
| Proposition No. I., . . | Yes or No. |
| Proposition No. II., . . | Yes or No. |
| Proposition No. III., . . | Yes or No. |
| And to Proposition No. VIII., | Yes or No. |

*Resolved*, That a printed copy of these Resolutions, with the several Constitutional Propositions annexed, shall be attested by the Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the

Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

Mr. BOUTWELL, for Berlin. It will be of course apparent to the Convention, that two main matters are before us. One is, to perfect the action of the Committee, and to take the judgment of the Convention as to whether the Committee has faithfully and impartially incorporated the views of the Convention into the various propositions; and having done that, in the next place, to determine the mode of submitting the revised matter to the people. I suppose, from the intimations and assurances that have been given upon all sides, so far as I know, that it is the desire of all that the Constitution should be, so far as it can be made, a perfect instrument; we all agree upon that, whether we agree to the propositions contained in the Constitution, or not; therefore, I believe I may say, that it is the desire of the Committee that the Convention should first go to work to perfect what is here presented, and that the mode of submitting it to the people should be considered as a subsequent matter. With that view in my own mind, and trusting that it may be acceptable to the Convention, I move that the first resolve be so divided that the subject matter of proposition number one be first considered, and then that the Convention proceed to consider the subsequent propositions in their order respectively.

The PRESIDENT. The Chair desires to submit a preliminary question to the Convention. The first resolve covers in its terms several propositions with regard to the form of the Constitution presented by the Committee. It may be desirable that the Constitution should be read to the Convention; but the Chair will take the judgment of the Convention. If no member desires to have it read, the reading will be dispensed with.

Mr. BOUTWELL. It would seem to be proper that the Secretary of the Convention should read the first proposition from beginning to end, and that opportunity should be given for the Convention to pass upon each article of each chapter. I hope one chapter will be read at a time, and each article considered.

The PRESIDENT. A single preliminary question presents itself to the Chair. Although the Convention have provided that a resolve involving the merits of the Constitution, should have two separate readings, the Chair supposes that on this occasion that rule may be dispensed with. As in other cases where no objection is made, the Chair will consider that the rule is suspended by general consent, and will put the question on the final passage of the resolves.

Mr. LORD, of Salem. If we examine this new Constitution, I think we shall find cases where the Revising Committee, as a matter of necessity, doubtless, have altered the Constitution in relation to matters that the Convention has never passed upon. I will give, as an illustration, the removal of justices of the peace upon the address of the two Houses of the legislature. This Convention have passed upon that subject, and they have provided a different mode for the removal than by means of address. By the old Constitution there was not that power over justices of the peace, and yet the Revising Committee have given that power; and I submit that that is an amendment to the Constitution. I think it will turn out in quite a variety of instances, that the Constitution has been amended by the Revising Committee in parts which have not been acted on by the Convention.

The PRESIDENT. When the question is raised upon any point of that kind in its order, the Chair will rule upon it.

Mr. LORD. If they are real alterations of the Constitution, they certainly require two readings under the rule; and the question should not now be upon the final passage.

The PRESIDENT. The Chair will take the direction of the Convention upon this question.

Mr. SCHOULER, of Boston. I desire to state, for the information of members, that those parts of the old Constitution which are unchanged, are printed in our copies "leaded;" those parts which are entirely new are set "solid;" while those parts of old sections which have been changed are in *italics*.

Mr. SARGENT, of Cambridge. It would seem to me to be proper that the Secretary should read the resolves that have been passed by the Convention in connection with the provisions reported by the Revising Committee, in order that we may ascertain whether they have been correctly incorporated.

The first resolve was then read, and the question stated upon its adoption.

Mr. BOUTWELL requested that the Preamble and Declaration of Rights, in the first chapter, might be read.

The PRESIDENT. The details of each chapter will be read and considered separately, before the Convention proceed to take the question upon them.

Mr. LORD. I think, before that is done, it will be most convenient to know upon what principle the Committee have separated several

articles and placed them by themselves to be acted upon separately, while the bulk is to be acted upon together. If there is any principle upon which the Committee have acted, I desire to have the chairman state what that principle is, so that if, by the adoption of that principle, more propositions can be submitted separately than the Committee have reported, I think they should be so submitted. If, however, they have adopted a principle which includes some of these propositions which they have submitted separately, then such propositions should be included.

What I desire to know is, upon what principle it is that these seven particular and specific propositions are taken away from the body of the Constitution, and placed each by itself, and why the Constitution, otherwise, is put to the people in bulk? Of course, Sir, there must have been a reason for this, and that I want to get at.

The PRESIDENT. The gentleman will allow the Chair to suggest that it would first be better to determine whether the Constitution, as reported by the Committee, should be read or not, and after that, the whole question opened by him will be before the Convention.

Mr. LORD. I was about to wait, but it was suggested by the gentleman for Berlin to take up the different parts separately.

The PRESIDENT. The Chair would suggest that the question being submitted, upon the request of the gentleman for Berlin, upon the first proposition, that will be considered first. But the question immediately before us is, whether the Constitution shall be read. The Secretary will read that portion of the revised Constitution reported by the Committee, which is embraced in so much of their Report as is numbered "One."

Mr. BOUTWELL. I desire that it shall be read.

The Secretary accordingly proceeded to read, and read so much of the revised Constitution as is contained under the heads "Preamble," and "A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts," 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.

A DECLARATION

*Of the Rights of the Inhabitants of the Commonwealth of Massachusetts.*

ARTICLE 1. 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.

ART. 2. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

ART. 3. 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.

Art. 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.

Art. 5. 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.

Art. 6. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

Art. 7. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Art. 8. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods, and in such manner, as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Art. 9. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

Art. 10. 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: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. 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.

Art. 11. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Art. 12. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed, in this Commonwealth, in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

Art. 13. 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. 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.

Art. 14. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Art. 15. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

Art. 16. 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 practised, 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.

Art. 17. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

Art. 18. The people have a right to keep and to bear arms for the common defence; and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the con-

sent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

ART. 19. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

ART. 20. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

ART. 21. 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 in such particular cases only as the Legislature shall expressly provide for.

ART. 22. The freedom of deliberation, speech and debate, in either House of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

ART. 23. The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

ART. 24. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the Legislature.

ART. 25. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

ART. 26. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

ART. 27. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

ART. 28. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

ART. 29. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

ART. 30. 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 *by tenures established by the Constitution, and* should have honorable salaries *which shall not be diminished during their continuance in office.*

ART. 31. 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: to the end it may be a government of laws and not of men.

Mr. BOUTWELL, for Berlin. The idea which I had in my mind when I introduced the Report, was this: that by general consent, we might go through with the Report of the Committee, chapter by chapter, and perfect it. If there are errors anywhere in the Report submitted by the Committee, they should be corrected as we go along from chapter to chapter, waiting, after the reading of each chapter, for such suggestions as gentlemen shall be pleased to make, the main question, all the while being upon the adoption of the proposition numbered "one." I am not desirous that the main question should be put until a fair chance shall have been given to every gentleman to express his opinion upon each and every individual thing in the revised Constitution.

Now, in regard to that portion which the Secretary has read, I may say that there are two changes only, in the Declaration of Rights. Article twelve of the Bill of Rights, by a vote of the Convention, found in Document No. 28, has been transferred from the sixth chapter of the present Constitution, being the chapter upon oaths and subscriptions, and made to constitute article twelve of the Bill of Rights, in precisely the same form.

In regard to the thirtieth article of the Declaration of Rights, some few changes have been made. Those are expressed in italics, and result from the change in the tenure of the judicial office, that being now during good behavior, but hereafter, by the tenure established by this Constitution, if adopted by the people, it will be ten years. Another change relates to the salaries of the judicial officers, and this provides, in accordance with the vote of the Convention, that they should

have honorable salaries, which shall not be diminished during their continuance in office. That change is placed here in direct conformity to the language of the resolve of the Convention, which the Committee took for their guide.

So far as I know, that is all that need to be said at present.

Mr. SCHOULER, of Boston. I move an amendment to the fifteenth article of the Bill of Rights.

The PRESIDENT. The Chair desires to know whether there is a general consent that the Preamble and Bill of Rights, which have been read, shall be considered by themselves?

Mr. HUBBARD, of Boston. I rise, Mr. President, to object to that course. It seems to me that there is a preliminary question which should first be disposed of. If the Convention determine or shall determine to put each proposition to the people separate and distinct from each other, and by itself, then this work of revising these amendments of the Constitution, becomes wholly superfluous. I suppose the question of the gentleman from Salem, (Mr. Lord,) a short time since, tended to the presentation of that preliminary question, that we might know upon what principle this Report has been made. I supposed that after the Preamble and Declaration of Rights should have been read, we should have had some explanation of that principle from some member of the Committee who had in charge this work of revising and putting the amendments and the Constitution in form.

The PRESIDENT. The Chair desires to state that there is no rule of the Convention which justifies the Chair in stating the question as has been proposed by the gentleman representing Berlin, (Mr. Boutwell). The question is upon so much of the Report as is numbered "one," and upon so much of the Constitution as is covered by that part of the Report.

Mr. HUBBARD. I object to the subject being considered in the way which has been suggested by the gentleman who represents Berlin, until after the Convention shall have decided and determined in what form they intend to send the Constitution out to the people.

The PRESIDENT. The gentleman from Boston will see that, after entering upon the debate of this first, if the previous question should be moved, and the main question should be ordered to be put, there will be no opportunity of perfecting the different propositions, covered by the other resolves, in the way of amendments. It is to avoid that difficulty that the Chair suggests the unanimous consent of the Convention to the consideration of the Report in the manner indicated by the gentleman representing Berlin.

Mr. LORD, of Salem. The resolve numbered "one" covers the entire Constitution, unamended, as well as amended.

The PRESIDENT. The Chair understands that the first resolve covers so much of the Constitution reported by the Committee, as extends to and includes the article upon the revision and amendments of the Constitution, and which covers the first thirty-eight pages of the printed Report.

Mr. BOUTWELL, for Berlin. I believe it is a rule of this Convention, that any member may call for a division of the question. I did call for that division, in such a manner that the question can be taken upon that part of the Report which is numbered "one." But the gentleman from Salem is debating a question not now before us.

The PRESIDENT. The first question is upon agreeing to the first proposition in the first resolve.

Mr. LORD. I understand the Chair to have ruled that the first question is upon the first resolve, and that if the previous question should now be moved, the question would have to be taken upon the first resolve as a whole, which, as I said before, embraces nearly the whole Constitution which we intend to put forth to the people; all except some seven short, distinct propositions, which this Committee recommend to be submitted as separate questions, but which occupy only two pages out of the forty of this printed Report.

The PRESIDENT. The Chair stated, or intended to state, that the question is upon the first proposition of the first resolve.

Mr. LORD. That being so, Sir, I like the form of proceeding suggested by the gentleman representing Berlin, (Mr. Boutwell,) very well, but at the same time it seems to me that as a preliminary question, we ought to find out in the first place the principle upon which the Report of the Committee is based, to see whether we are willing to adopt that proposition, and whether the Report is in accordance with that principle which they have adopted in making it. We ought to be informed why they have separated from the body of the Constitution these seven specific subjects, which form the end of their Report, to be submitted separately to the people, in preference to other subjects? Why they chose to report that seven particular subjects, rather than any seven other, should be separately considered by the people? Of course that has been done upon some principle, as we are not to suppose that the Committee acted without some general principle to guide them. There must have been a reason for selecting these seven, rather than seven other,

and I desire to know what that reason is. If the gentleman will tell us what that principle of action is, it may be one which will commend itself to the judgment of the entire Convention. It may be also that in laying down the principle, the Convention will discover that certain of the propositions which are placed in the body of the Constitution by the Committee, and which are not in the present Constitution, ought to be placed in separate articles, and submitted separately to the people.

The PRESIDENT. The Chair desires to know whether there is any objection to the consideration of the Bill of Rights by way of amendments?

There was no objection.

Mr. SCHOULER, of Boston. I ask whether it is in order to move to insert the words which are contained under head "four" of the Report of the Committee, and which are placed there to be submitted to the people separately, in the article of the Bill of Rights to which it refers, viz.: that concerning excessive bail and fines? Whether it is not competent for, and in the power of the Convention to make that article of the Bill of Rights complete, and send it out to the people complete? If such an amendment is in order, I move it.

The PRESIDENT. The Chair thinks the motion is not in order, as that question is not before the Convention. The question is upon the Declaration of Rights.

Mr. SCHOULER. My wish is, to amend the Declaration of Rights, by making the subject to which I have referred a part of the twenty-seventh article of the Bill of Rights. The words which I propose to transfer to the Bill of Rights are these, which are found under head "four" of the Report of the Committee:—

No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

The PRESIDENT. The Chair misapprehended the motion of the gentleman. The motion is in order.

Mr. SCHOULER. Then I make that motion.

Mr. BOUTWELL, for Berlin. I have but a very few words to say in reference to the motion of the gentleman from Boston (Mr. Schouler). It is, of course, well known to the Convention, that our Constitution, bearing date in 1780, has been subjected to many important amendments—some thirteen in all—from that period down to this time. The consequence of the adoption of these amendments is, that many parts which stand in the Constitution, and are printed with it, have been annulled. Now, then, the chief object of the Committee was to present to this Convention, and to the people of the Commonwealth of Massachusetts, a systematic form of government; that it should contain the principle contained in the system established in 1780; and that, moreover, it should be, so far as it was to be considered as a machine, a perfect machine. Having, therefore, proceeded with that view, we took what remained of the original Constitution of 1780, what remained of the amendments adopted since 1780, and such of the resolutions which have been adopted by this Convention as were essential to the harmonious operation of the system of government which we proposed to establish. We considered that one great object to be obtained by this Convention, was to give to the people of this Commonwealth an intelligible and systematic organic law; and therefore, to carry out that purpose, we have been obliged to depart from that principle which we desired in the outset to recognize and act upon, and that was, that this Convention should allow the people of the Commonwealth to express a distinct opinion upon every separate proposition. But we found that this was absolutely impossible. We stand to-day very much in the condition of a people establishing anew a system of government. Therefore, then, we have placed in proposition number "one," all that portion of the Constitution of 1780 which remains, the subsequent amendments, and so much and many of the resolutions adopted by this Convention as were necessary to perfect and make harmonious and systematic the government which we propose to establish.

Now, then, upon the principle that it is practicable to allow the people to express an opinion separately, upon matters not essential to the harmony of the system of government, we have submitted to this Convention, and upon their judgment they are to submit to the people, certain separate propositions upon which the public sentiment is divided. Those propositions may be either rejected or adopted, without disturbing, in any degree, the harmony of the system of government which we have here contained in proposition "one."

Now, in regard to this proposition, it is not necessary to the working of the government. We have passed such a resolution. It may be that a majority of the people of the Commonwealth are in favor of it; but they have a right to express an independent opinion upon it, because it is not one which is essential to the system of government which we have here. That, I think, could not be said with equal justice of any provision which the Committee have incorporated into proposition number "one."

Therefore, acting upon that rule, we decided to present to the Convention, and through them to the people, the different propositions which are contained under the heads marked from "one" to "eight," inclusive. Number "one" containing the general system of government, and numbers from "two" to "eight," inclusive, containing independent propositions which may be separately submitted to the people. If rejected, the system of government is not disturbed; if adopted, they become incorporated into the Constitution. The government goes on either way.

Therefore, it was the judgment of the Committee that, under the circumstances, it was a part of their duty to submit a systematic form of government to the people, perfect in itself, and then, independent questions, which, if the judgment of the people shall be found to be in favor of them, will become a part of the Constitution; and which, if lost, will cause no disturbance of the system. It is upon such grounds that we have made the Report.

Mr. SCHOULER, of Boston. I understand the argument of the gentleman for Berlin to be, that these seven different propositions are to be left out of the Constitution, and are to be given to the people separately to vote upon them; and if the majority of the people agree to them, or to either one of them, then those which are agreed to, become a part of the Constitution; and his ground seems to be, that they can be left out of the Constitution, and still the Constitution will be a perfect and full declaration of rights, and the proper fundamental law of the Commonwealth. Now, Sir, I will ask that gentleman, and the members of this Convention, why some of these articles—and particularly the fifth one, concerning imprisonment for debt—should be left out in this way, when at the same time we find in the next chapter, upon the general court, it is stated in article third, that the "compensation of members of the general court shall be established by standing laws; but no act increasing the compensation shall apply to the general court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days."

Suppose that was struck out of the Constitution, and the Constitution should remain just as it is, leaving the legislature to sit as long as they have a mind to, and to fix their own pay as they have done ever since 1780. Is that not as distinct and separate a proposition to be submitted to the people, as the article in relation to imprisonment for debt, or the article in relation to *habeas corpus*, which are both left out? Here is another provision in article six, declaring that the "general court shall have power to make laws regulating marriage, divorce and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract." Suppose that was left out, what harm would be done? Sir, that is a new feature in the Constitution which is reported here; and I will ask gentlemen of the Convention why these should be considered as of so much consequence as to go into the Constitution, while that in regard to imprisonment for debt is left out? It seems to me, that the Constitution, in relation to that part of our legislative power, would be just as perfect if these were left out, and it should remain in the same way that it has remained ever since 1780. A little farther on we find article thirteen, in the same chapter, which says: "In all elections by the general court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce*." This is considered of so much importance that it is put into the Constitution, while the provisions in regard to the right of *habeas corpus*, and imprisonment for debt, and other matters, are left out. I can see no principle in this thing; and I think, if we want to strengthen the Constitution, we had better put this provision about imprisonment for debt into it. I do not desire to occupy the time of the Convention, and so I will close by saying that I hope the amendment will be adopted.

Mr. BOUTWELL, for Berlin. I have not a word to say about the amendment; but we should consider, that if this Constitution is adopted, it ought to be as perfect an instrument as possible. Suppose it should be adopted as it stands, excepting that the third article of the chapter on the general court should be left out; we should then have no provision in the Constitution, of any sort, in reference to the compensation of members, unless we put the Constitution in such a form as we shall have to do, if we follow the suggestions of the gentleman from Boston, that only those parts of the existing form of government shall be annulled, which are inconsistent with what we propose. The consequence will be, that this will lead us to a position upon which no government can stand. That provision of the existing Constitution will be found on page 80, and is as follows: "The expenses of travelling to the general assembly, and returning home once in every session, and no more, shall be paid by the government out of the public treasury," &c. If you annul only those things in the existing Constitution, which are not in the new one, what does it bring with it? It brings with it the necessity of going to

the Constitution of 1780, and examining all the subsequent provisions of constitutional law; and then it all depends upon the construction. In regard to the provision respecting legislative power over alimony and divorce, if you pass your Constitution in such a way as to annul all the existing provisions, and this should be put separately and rejected, you would have no power to pass laws regulating the proceedings in relation to divorce and alimony. Are you prepared to do that? If you pursued the other course, and allowed all to remain that is not inconsistent with the new action, then comes up the third article of the Constitution in reference to the judiciary power, that they may regulate proceedings with regard to divorce and alimony, unless the legislature shall otherwise order. The consequence of this mode of proceeding will be, that you will have two Constitutions in existence at the same time, and every man will have to go to the Constitution of 1780, and to all the subsequent amendments, and analyze them, to see whether they are consistent with the new one. Therefore, I say that we must put into the new Constitution what is necessary to make the system perfect, and stand upon that. The rest is of little consequence.

Mr. LORD, of Salem. If the gentleman stands upon that ground, and puts into the Constitution as a whole, just exactly what is necessary, in order to make a perfectly complete system of government, and just enough to make his machine work well, I want to know why he has not separated all these new propositions which are not necessary, in order to enable the instrument to be a perfect instrument. Why has he not allowed the voters of this Commonwealth to pass distinctly upon such questions as do not go to make up a perfect system of government? I will give him an example. I will take the proposition which is incorporated into the Constitution, of the secret ballot, and I will ask, why did he not put the secret ballot as a separate proposition? Cannot the government work, and is not the machine a perfect instrument, without the secret ballot in it? If they were to be chosen by ballot, as the old Constitution provides, does it not stand well enough, without having the secret ballot put in? Cannot that stand as an independent proposition, just as well as imprisonment for debt? I want to have gentlemen show me how it happens, while we have been living here seventy years under this government, and have got along pretty well, and all that time have not had this provision —how does it happen that there is now such an essential necessity for the introduction of this principle into the Constitution? What I want to find out, is, whether there is any distinct principle within which this Report of the Committee falls. It seems to me that it does not fall within any principle at all. Suppose it is submitted to the people, whether the judicial tenure should be changed, I want to know whether that cannot be put as a distinct proposition to the people? I do not see anything to prevent that from being done; and so, Sir, I do not know why any one of these seven articles is any less necessary than the several articles of the Bill of Rights. If I understand the ground upon which the gentleman's argument is put, it is exactly this: that there is nothing in this first proposition, occupying thirty-eight pages, which is not essential to the operation of government. Does not the gentleman for Berlin say, that there is nothing in these thirty-eight pages, that is not essential in order to make the machine operate?

Mr. BOUTWELL. It is undoubtedly true, that there are some things in these propositions which might be submitted separately. For instance, we have decided that a quorum in the Senate shall be twenty-one, and of the House one hundred. There is a distinct proposition, no doubt, which can be submitted to the people. We have also provided, that the judicial tenure shall be ten years, and to stand during good behavior; that is a distinct proposition; but, suppose you leave out of the Constitution which you intend to submit to the people, all reference to a quorum of the Senate, and all reference to a quorum of the House of Representatives, and you do not establish the judicial tenure one way or the other —you submit them to the people as independent propositions, and what is the result? If the people vote that the quorum of the Senate shall not be twenty-one, the quorum of the Senate under the old Constitution is sixteen. If they vote that the quorum of the House shall not be one hundred, then you have no quorum unless you revive the old Constitution, and have it sixty. But in case you revive the old Constitution, the difficulty to which I have referred, presents itself. It is undoubtedly true, that many propositions could be submitted separately, but yet, in order to make the different parts harmonious, it is better to submit them together.

Mr. LORD. Let me call the gentleman's attention to chapter fourteen articles first and second, in relation to future revision and amendments of the Constitution; why could not that be put separately?

Mr. BOUTWELL. We have already, in the existing Constitution, an article in reference to amendments to the Constitution, and we have deemed it one subject, as we have that of elections. We have three separate provisions in

regard to elections, but we have thought it expedient and proper, in order to make it harmonious, to have one chapter, where all in our fundamental law upon that subject, might be found, and we have framed a chapter accordingly. So with regard to amendments of the Constitution. If you proceed to analyze the Constitution in that way, the result will be that we shall have so many propositions to submit to the people, that, after all, the system will be exceedingly unintelligible. There are some propositions which are entirely disconnected with the Constitution, and which may be submitted independently, without essentially affecting the Constitution one way or the other. That, I think, will be the case with every one of these seven articles; if they are rejected, the people are not confused—if they are adopted, the people are not confused.

Mr. LORD. I understand the explanation of the gentleman for Berlin, to be this: Although the proposition in reference to the secret ballot, which I have pointed out, is one of those amendments which are of a nature that they can be submitted separately, and yet, inasmuch as the same subject matter is in the Constitution, it is desirable to have all upon the same subject incorporated together. In order that the people may more readily understand it, all on one subject should be put in one chapter, and submitted together. Now, the thought accidentally occurred to my mind, that it was a little singular why he did not apply the principle to the twelfth article of the Bill of Rights, where the subject treated of is the right of *habeas corpus;* why is not his proposition, numbered two, which relates to that very subject, put into the twelfth article, instead of being placed at the end, as a proposition by itself? I want to find out, if I can, whether there is any principle that will cover the whole Report.

The question being upon the motion of Mr. Schouler which was, to annex to the twenty-seventh article of the Bill of Rights, the following words, contained under head "five" of the Report of the Committee, viz.: "No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud," it was put, and decided in the negative.

So the amendment was not agreed to.

Mr. KELLOGG, of Hadley. I move to amend the fourth article of the Bill of Rights, which is as follows:—

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,

by striking out the three last words, "in Congress assembled."

The PRESIDENT. The Chair is of opinion that the proposition is not in order.

Mr. HALLETT, for Wilbraham. It seems to me to be important to settle here, the rules of order upon which we are to proceed, before we advance any farther, in order that we may know how and by what we are to be governed. For instance, the subject upon which the gentleman from Hadley proposes an amendment, was a subject considered in the Committee, and reported against by the Committee on the Bill of Rights. Therefore, the subject has been considered in Committee, has been reported upon, or rather not reported upon, which is equivalent to recommending no change in it, and has so passed through its various stages in the Convention. Now, the question arises upon the Report of a Committee, which is merely a Committee to draft the form of a Constitution—to reduce the resolves of the Convention to the best form and language which would express the meaning and intent of the resolves. The question arises here, at this stage, whether the Constitution is open to amendment upon those topics which have been submitted to a Committee and acted upon; and then, secondly, whether it is open to amendment upon topics which had not been submitted to a Committee. In my judgment, in neither case can it be done. If it should be considered in order, there are a number of amendments which I should propose; for instance, as to giving the legislature the power to establish martial law. With the view of having this matter determined, I submit these remarks; that we may understand our position, and settle, *in limine*, the question, and thereby we shall be released from great difficulty and delay.

The PRESIDENT. The Chair rules that the amendment of the gentleman from Hadley is not in order, inasmuch as it reverses the action of the Convention.

Mr. HATHAWAY, of Freetown. I do not rise for the purpose of taking an appeal from the decision of the Chair, by no means; but merely to ask for information through the Chair. I suppose, Sir, that it was the duty of the Committee, which have made this Report, under the order for their appointment, to revise and report to the Convention, for their consideration, the amendments which had been proposed and adopted by the Convention to the Constitution. The Committee have made the Report which we have before us, and what is it? They have embraced not only

the amendments, I am free to say, but the whole provisions of the Constitution, as it has heretofore existed, together with the amendments which have been made since 1780, and are now in force. If all this is proposed here as an amendment, I submit whether the proposition of the gentleman from Hadley is not a correct one; that is, to make an amendment to this amendment? If it be not an amendment, then I submit the question as to the power of the Committee to report as they have. The resolution by which that Committee was directed to be appointed, as I have it from the Secretary, is in these words:—

*Ordered*, That a Committee of —— members be appointed to reduce such amendments as have been, or may be agreed upon, to the form in which it is proper to submit the same to the people for ratification.

It evidently only applies it to such amendments as we have made to the Constitution, and not to a substituted Constitution.

The PRESIDENT. The gentleman from Freetown raises a different question from that raised by the amendment offered by the gentleman from Hadley. If the gentleman proposes his question as a question of order, the Chair will rule upon it.

Mr. HATHAWAY. My question is, whether this Report of the Committee is embraced within the meaning of the word "amendments," as used in the order by virtue of which the Committee was appointed, under date of June twenty-first? If it be embraced in the meaning of that word, then I submit that the proposition of the gentleman from Hadley is a correct one, and in order. If it be not embraced, then I submit whether the Committee have not superseded their authority?

The PRESIDENT. The question raised by the gentleman it is not competent for the Convention to settle at this time, as the question now under consideration is the Declaration of Rights —that is, under the unanimous consent of the Convention. If the gentleman presents any case in reference to the Bill of Rights, where the Committee have transcended their authority, the Chair will decide it.

Mr. JENKS, of Boston. Is it in order to offer an amendment to the Bill of Rights?

The PRESIDENT. It is.

Mr. JENKS. I move, then, to add to the twenty-fifth article of the Bill of Rights, which is as follows:—

Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

The following words:—

No person shall be imprisoned for any cause, not declared by law to be criminal, or dangerous to the public safety.

If this amendment is adopted, it will supersede the provision under head "five," upon the same subject, though in different language.

The PRESIDENT. The Chair thinks the amendment not in order at this time, as it is only competent to amend in matters before the Convention, and that in form, and not in substance.

Mr. PLUNKETT, of Adams. I move to amend article thirteenth of the Bill of Rights, by adding thereto what the Committee have placed under head "three," with a view of a separate submission thereof to the people, and which is in the following words:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty, or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

The question was taken, and the amendment was rejected.

No farther amendments being offered to the Bill of Rights, the Secretary then read the first chapter of the Frame of Government, as follows:

ARTICLE 1. The department of legislation shall be styled the General Court of Massachusetts. It shall consist of two branches, a Senate and a House of Representatives, each of which shall have a negative upon the other.

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year, on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

ART. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session, for a longer time than one hundred days.

ART. 4. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor, within five days after it shall have been presented *to him*, the same shall have the force of a law.

But if any bill or resolve shall be objected to and not approved by the Governor, and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution, such bill or resolve shall not become a law, nor have force as such.

ART. 5. The General Court shall forever have 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, plaints, actions, matters, causes, and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

ART. 6. The General Court shall have power to make laws regulating marriage, divorce, and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract.

ART. 7. And farther, 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; and to name and settle annually, or provide, by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying within the said Commonwealth; and also to impose, and levy, reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth, for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

ART. 8. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings: *provided*, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: *and provided, also*, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

ART. 9. Each branch of the General Court shall have authority to punish, by imprisonment, every person, not one of its members, who shall be guilty of disrespect thereto, by any disorderly or contemptuous behavior, in its presence; or who, in the town or city where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any

of its members, or assault any of them for anything said or done in its session; or shall assault, or arrest, any witness, or other person, ordered to attend it, in his way in going, or returning; or who shall rescue any person arrrested by its order: *provided*, that no imprisonment, on its warrant or order, for either of the above described offences, shall be for a term exceeding thirty days; and the Governor and Council shall have the same authority to punish in like cases. And no member, during his going to, returning from, or attending, the General Court, shall be arrested, or held to bail, on *mesne process*.

ART. 10. Each branch of the General Court may try, and determine all cases where their rights, and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

ART. 11. Each branch shall be the final judge of the elections, returns, and qualifications, of its members, as pointed out in the Constitution; shall choose a presiding officer from among its members; appoint its other officers; settle its rules and orders of proceeding, and shall have power to adjourn: *provided*, such adjournment shall not exceed *three* days at a time.

ART. 12. And whereas the elections appointed to be made by this Constitution, on the first Wednesday in January annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned, from day to day, until the same shall be completed.

ART. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce*.

ART. 14. The enacting style, in making and passing all acts, statutes, and laws, shall be: BE IT ENACTED BY THE GENERAL COURT OF MASSACHUSETTS.

Mr. LORD, of Salem, asked the reading of the resolution of the Convention which authorized the change in article four.

Mr. BOUTWELL, for Berlin. I suppose the gentleman refers to the word "present" which has been inserted in that article. A part of the article, including the word "present," inserted in italics, reads as follows:—

But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law.

Now, Sir, of course under the order of the Convention, the Committee thought that some little discretion was allowed them; and I have in my mind a fact within the knowledge of the gentleman from Salem himself, which assures me that I was not alone in that opinion. If the Convention will be kind enough to read from the word "present," in italics, to the close of the article, they will see that the word "present" is used in the present Constitution in reference to one branch of the legislature, and not in reference to the other. Therefore, it being declared in the original article that two-thirds of the "members present" in one case, and there being no declaration in regard to the other, the Committee thought it within the rule, for the purpose of consistency, in the administration of the government in that respect, to introduce the word "present." That is the idea the Committee had, and, of course, it is for the Convention to decide whether the Committee went beyond their authority in introducing this word.

Mr. LORD. Then I understand from the chairman of the Committee, that this alteration is made without any vote of the Convention. The old Constitution requires that when a bill shall receive the veto of the governor, it shall, in the first place, be sent to the House in which it originated, and be passed by two-thirds of that body, not of those who happen to be present at the time, but by two-thirds of that body in which the bill originated. This amendment, which this Convention has not voted nor acted upon, provides that two-thirds of a bare quorum may pass a bill, notwithstanding there may not be even a majority present, and notwithstanding the number may be less than the number that ordinarily votes in favor of an amendment.

I merely call the attention of the Convention to this matter, because it is a palpable alteration of the Constitution, by the Committee, without the authority of any action of the Convention in its favor, for there has been no action of the Convention upon it.

Now, I suppose the Committee went the whole length of its powers, when they reported the old Constitution, where it remains unaltered, when under the authority to report amendments, it reported what were not amendments; but it seems to me to be transcending their powers, to report as an amendment what the Convention have not at all acted upon. The question now is, not whether it ought to be so, but whether we have made it so.

Mr. DANA, for Manchester. I would state, in addition to the reasons stated by the gentleman who represents Berlin, for the action of the Committee, that we understood, and understand now, that the practice has been to consider this article four, as requiring only two-thirds of the members present, in either branch of the legislature. So that, by this amendment, we not only make the rule uniform, but make it conform to the uniform practice heretofore.

Mr. LORD. Will the gentlemen of the Committee inform us in what cases any resolve has passed either branch by two-thirds of those present, where that was not two-thirds of the whole?

Mr. DANA. I do not know, of my own knowledge, that there had been anything actually passed by such a two-third vote, but I have been told, on good authority, that such has been regarded to be the rule. It has always been so considered. I cannot mention any vetoed bill that has actually passed the House, in which it originated, by a two-thirds vote, when that vote was not two-thirds of the whole. On consulting with persons learned in the practice of the legislature, Presidents and Speakers, I learned that such had been the understanding, and such the action of the House of Representatives. Whether the question has ever come under the adjudication of the courts, I do not know.

Mr. LORD. Has there ever been any case, in which a bill has passed the branch of the legislature to which it was returned, and declared passed, with less than two-thirds of that branch voting in its favor? Because, if there has been, it is a precedent in favor of our adopting this as a rule. But if there has not been, I am entitled to my own construction of the Constitution, until the supreme court have ruled it, or until the people have changed it; and I submit, that this Committee cannot put their construction upon language, and base an amendment upon that construction, and say that it means two-thirds of those present, without deciding whether it means those present and voting, or not. I do not believe there is a precedent to that effect, because the only bill I ever knew pass through the House, against the governor's veto, was the proposition to increase the members' pay, and that passed by a good deal more than two-thirds of the whole number.

Some gentleman suggests to me that the bill establishing the Boston Wharf Company passed so. My impression is, that when it was vetoed, it failed, and was brought up again the next year.

Mr. BOUTWELL. It passed the same year.

Mr. LORD. But did it pass by less than two-thirds of the body to which it was returned? To which body was it returned?

Mr. BOUTWELL. To the Senate.

Mr. LORD. The gentleman says it was returned to the Senate, and being returned to the Senate I suppose that gentleman can tell me whether it obtained twenty-seven members of that body in its favor, because it must have obtained the votes of that number in order to have had two-thirds of that body? If it did, then it is a precedent.

Mr. BUTLER, of Lowell. I wish to call the attention of the gentleman from Salem, (Mr. Lord,) to a very palpable alteration in the same article, which I commend to his deliberate judgment, because that has never received the judicial interpretation of the supreme court. He will find it in the last line but one on the ninth page, in the following language:—

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor, within five days after it shall have been presented *to him*, the same shall have the force of a law.

The words "to him" are very evidently inserted. Now, the supreme court have never decided judicially upon that point, as I am aware of; and I should like to know by what authority the Committee put in those words?

Mr. LORD. I do not believe that the Committee have any right to put in the words "to him," for I think if a governor, to avoid having a bill presented to him for his signature, should undertake to take himself out of the State for five days, and the bill should be presented at the council-chamber, that would be a sufficient presentation to him. I do not believe in the Revising Committee undertaking to amend the Constitution. If it is proper that the Constitution should be amended, it should be amended by the Convention.

Mr. BUTLER. The Convention are now about doing it, as I understand it. That is what we are after; if not, we had better go home. We are about adopting these suggestions.

Mr. LORD. If the gentleman from Lowell is right, I withdraw my request for the reading of the resolution. I understood the ruling of the Chair to be that no amendment of the Constitution which affected the substance of the Constitution, and which had not been passed upon by the Convention heretofore, would be in order. If these are amendments to the Constitution, and if they have not been passed upon, they are not in order now.

The PRESIDENT. The gentleman from Salem raises the question of order whether the Com-

mittee have transcended their authority. That question has not heretofore been raised.

Mr. BUTLER. I am of the opinion that there has been a uniform construction in regard to this matter. Let us take an illustration. The gentleman from Salem supposes that the governor might be sick or he would not be found within five days; or he might have broken his leg and be confined to his room at New Bedford, and then if a bill or resolve was presented for five days to his empty chair in the council-chamber when it was known that the governor would not be there, it would have the effect of law.

Mr. LORD. By our provisions the lieutenant-governor is acting governor under such circumstances.

Mr. BUTLER. I am talking about it as it was. The lieutenant-governor was not governor, and that is another provision that we have changed. But in these cases where a certain construction has been given to language by usage, the Committee have not changed the matter in substance; they have only made use of good language and good forms to express just exactly what it meant before. In this case, there is not a man here who supposes that an absolute majority of two-thirds was required. It is easy for the gentleman to ask how the vote stood, when neither he nor anybody else here knows how it stood. I will put the question to him, whether he knows himself.

Mr. LORD. I am going to see.

Mr. BUTLER. When the gentleman finds out, I shall beglad to hear the result. But when the gentleman asks questions that he cannot answer himself, it puts me in mind of an old proverb which says that a certain class of persons may ask questions which a philosopher cannot answer. [Laughter.] My rule is, if I do not know the truth of the case, to hold my peace. But I think we might as well meet this, once for all—Have the Committee transcended their power? If they have, we shall have to send their Report back to them, and in the course of some weeks or months we may perhaps get a new Report.

Mr. HILLARD, of Boston. I wish to ask for information, although I shall, perhaps, come in the category of those who ask questions that cannot be answered, whether the change of "three days" in the last line of article eleven has been adopted by the Convention.

Mr. LORD. I will state that I have been informed that the bill by which the Boston Wharf Company increased its capital, passed by twenty-four to seven—being two-thirds of those present, and not two-thirds of the Senate. No one raised any objection.

Mr. JENKS, of Boston. I will call attention to the proviso in article eight, which is as follows:—

*Provided*, That no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose.

It seems to me that there is a great inconsistency in requiring that any town in order to become a city should have twelve thousand inhabitants; and more than six thousand would be required to vote for it, if I understand it right.

Mr. BOUTWELL, for Berlin. The gentleman will perceive, if he notices the type in which that proviso is printed, that it is exactly the same as a provision of the present Constitution; and according to the ruling of the Chair, the Convention cannot now proceed to consider any matters of that kind. I will say in regard to the observation of the gentleman from Salem, and in order that the impression may be removed which is raised upon the minds of other gentlemen upon this floor, that the first idea of the Committee was to make a systematic and harmonious frame of government, so that they had in some cases to take liberties with the language which was passed by this Convention. For instance, in the very chapter now under consideration, the Convention decided by a vote that the Senate might adjourn three days at a time, but they passed no such vote in regard to the House. The existing Constitution provides that the House may adjourn for two days at a time. The Committee did take so much liberty as this; it being desirable to comprise it all into one chapter, under the head of the general court, for the purpose of harmony, they say that each branch of the legislature may adjourn for three days. They supposed it might be proper to apply that provision to the House of Representatives, being guided by the resolve which was passed by this Convention in relation to the Senate. If the gentleman from Salem was in his seat, I would say to him, that if he would turn to the chapter on elections, he will see a provision for the election of governor by the House and Senate in case there is no election by the people. The words "then eligible" were proposed to be added by one of the Committee, and I assented to it because I thought it expedient; it was thought proper that a man who should cease to reside in the Commonwealth should cease to be eligible as governor, and I accepted the recommendation. There was no provision made with regard to elections from cities; while provision

with regard to the election of governor from the towns was made, the cities were omitted; and what did the Committee do? They had to make a provision which stands in the chapter relating to elections, that the manner of calling and holding public meetings in cities for the election of officers under the Constitution, and the manner of returning the votes given, shall be as now prescribed, or as may be hereafter prescribed by the legislature. What I desire is, that the Convention will take up these different changes and examine them. The Committee have no desire to make issue on these points; they are perfectly willing that the opinion of the Convention should be taken, and they believe that a good reason can be given for all they have done.

Mr. LIVERMORE, of Cambridge. I should like to inquire of the chairman of the Committee, by what authority they put in the last sentence of article two, which is in these words:—

But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

Mr. BOUTWELL. I do not find any resolve on that subject, among my official papers.

Mr. LIVERMORE. The Committee on the Frame of Government reported it in the following words:—

The Legislature shall assemble every year, on the first Wednesday in January; and shall be dissolved on the day next preceding the said first Wednesday in January, without any proclamation or other act of the Governor.

That was afterwards amended, by striking out the words "said first Wednesday in January," and inserting the words "first Wednesday in January following;" but there was no provision allowing them to assemble at such other times as they shall judge necessary.

Mr. UPTON, of Boston. It seems to me that numbers seven and eight of the proposed amendments ought to go into the Frame of Government, and I can hardly understand why they were omitted, when all the other duties of the general court are included. I move that they be inserted, to constitute article twelve of the Frame of Government, as follows:—

ART. 12. The Legislature shall not create corporations by special act, when the object of the incorporation is attainable by general laws.

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes in specie.

The question being taken, the amendment was not agreed to.

Mr. LORD, of Salem. I wish to inquire whether the word "present" is under the power of the Committee? I raise that question of order.

The PRESIDENT. The gentleman from Salem raises the question of order, whether the amendments reported by the Committee of Revision to the fourth article of the first chapter, be in order. It is the opinion of the Chair that the insertion of the word "present" does not change the substance of the article; the experience of the Chair has been invariably that a question has been considered settled on receiving the assent of two-thirds of the members present and voting thereon. The Chair does not, therefore, regard it as changing the substance of the article.

Mr. LORD. In my opinion, it does change it, and I do not think the Committee on Revision have any authority to give a construction to an article about which there may have been a difference of opinion, so as to have the Constitution settled according to their exposition in relation to the governor's veto. The Constitution provides that sixteen shall be a quorum of the Senate; and I do not believe that that same Constitution meant that eleven members of the Senate should pass a bill over the governor's veto. I think, if they had meant that eleven members could pass a bill in such circumstances, they would not have said that it should take two-thirds of the body to pass it.

Now, if it should so happen—a thing which I can hardly suppose — that the President was wrong in his construction of the Constitution before, then this Constitution gets changed against my wishes, and without any action of this Convention. I am willing that the law should require two-thirds of one House only to pass a bill over the governor's veto, but I think there should be a check of two-thirds of either one body or the other of the legislature. It seems to me to be a good and desirable provision, and one which ought not to be changed, and especially it should not be changed without some action of the Convention. But suppose—and I agree that the charter of the Boston Wharf Company was so passed by a vote of 24 to 7—but suppose, upon a *quo warranto* against the corporation, the supreme court should hold that the charter never had an

existence, if they should go behind that which appeared to be a legal enactment, and make that decision, the fact that the President of this Convention had a different view of the subject, would not seem to me to be a sufficient reason for sustaining this phraseology. If, Sir, it really does mean the same thing, then it seems to me to be right to put it into the Constitution; if it does not, then it ought not to be incorporated into that instrument. It is undertaking to give a construction to, and to reduce to a certainty, a provision of the Constitution, upon which, perhaps, gentlemen may entertain different opinions. I am myself so much opposed to allowing two-thirds of a bare majority to pass a bill over the veto of the governor, that if that had been the true construction heretofore, I should have been in favor of a change. And I now move that the word "present," where it appears in italics, be struck out.

The question was taken upon the motion of Mr. Lord, and there were, on a division—ayes, 63; noes, 162.

So the amendment was rejected.

Mr. OLIVER, of Lawrence. Since the amended Constitution, as presented by the Committee, contains some provisions for which, when it comes before the people, I can vote, and some for which I cannot vote, and as these to which I refer are all contained in division number one of their Report, thereby compelling me to vote either against some that I approve of, or for some that I disapprove of, I move, in order to relieve myself from this future false position, that article three of this chapter, which is as follows:—

ART. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days.

Be separated from this chapter, and be placed among those provisions which are proposed to be submitted to the people as independent propositions, and form a new one numbered "nine."

The question was taken upon Mr. Oliver's motion, and it was decided in the negative.

So the amendment was rejected.

Mr. OLIVER. I make the same motion in regard to article thirteenth of the same chapter, and for the same reasons. That article reads as follows:—

ART. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce*.

The question was taken on the latter motion, and the amendment was not agreed to.

Mr. BOUTWELL, for Berlin. Some question has arisen in regard to the second article, relating to the general court. It reads as follows:—

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the Governor.

The question is upon the last clause. The Committee on the Bill of Rights, so far as I can learn, made an amendment to the first article of the existing chapter on the general court, which was adopted by the Convention. But it happens that in the tenth article of the Amendments to the present Constitution, are the words, "but nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor."

So far as I know, the Convention have never passed upon that portion of the tenth article or amendment to the present Constitution. The Committee have transferred that article, and made it here the closing paragraph of the second article upon the general court. So that, while I believe that the Convention have passed upon something nearly like this article, yet they have not passed upon that; if I am correct, the provision being part of the existing Constitution of the Commonwealth.

Mr. DANA, for Manchester. I can only say, that the preparation of this chapter was placed in my hands. I found this last clause in the old Constitution, and could not find any resolve by which it was repealed, and therefore I felt bound to put it into the Constitution, and it was adopted by the Committee.

Mr. LIVERMORE, of Cambridge. I move to strike out the very words contained in this last clause, that is, the clause relating to the assembling of the general court at such other times as they shall deem necessary. To be sure, it occurs in another part of the Constitution, but the Committee reported to strike out of the present Constitution the first article, and that was adopted by the Convention. I do not know what effect that clause would have, standing in another

part of the Constitution. It was once struck out by the vote of the Convention. If in order, I now move to strike out those words.

The PRESIDENT. The Chair is of opinion that the motion is not in order, as it proposes a change in matter of substance. If it appears from the records that the Convention have stricken out from the Constitution those words, the Chair will rule upon it as a question of order.

Mr. LIVERMORE. I desire to reserve the right to examine the matter.

Mr. ALLEN, of Worcester. I think I can explain the matter. In a part of the Constitution committed to the Committee on the Frame of Government, there was a provision that the legislature should assemble on the first Wednesday of January, and when called by the governor, and also at such other times as they should judge necessary. The Committee on the Frame of Government, moved to strike out that part which authorized the legislature to assemble at its pleasure. The Convention adopted that amendment. But it seems that a similar provision, which authorized the general court to assemble at its pleasure, occurs in another part of the Constitution. The Committee on the Frame of Government had not that part of the Constitution submitted to them, and therefore, they could not make a Report concerning it. The consequence is, that while the Convention have signified the purpose to take away from the legislature the power of assembling at such times as they should deem necessary, there is still a provision left in the Constitution, authorizing them to do so, and that remains in the new Constitution.

If the Convention generally believe that it is not necessary for the legislature to assemble, and to hold extra sessions, except when called together by the governor—and, I believe, extra sessions never have been held except upon such call—perhaps by general consent, and without objection, this part of the Constitution might be made to conform to the vote which the Convention have already adopted, and these words be stricken out.

Mr. BUTLER, of Lowell. I wish merely to suggest, that the right of the general court to assemble without the consent of the governor, is a valuable right. It is one which made the fundamental quarrel between Governor Gage and the general court of that day. He refused to have them called together, and made proclamation that they should not assemble together, but when they thought that the exigencies of the times required it, they did so; and, when they came to make a Constitution, they took care not to put themselves into the power of any governor. Therefore, I object to having it struck out.

Mr. MORTON, of Taunton. Is there no way of getting at this matter without unanimous consent? I did not exactly hear the suggestions of the gentleman from Worcester. I think it very important to strike out the words "at such other times as they shall judge necessary or" and leave them to be called together by the governor. Before it is finally settled one way or another, I beg leave to make a suggestion or two. It seems to me that if we authorize the general court to meet as often as they please, we render entirely nugatory another provision which we have incorporated among the new provisions of the Constitution, and we had better strike that out, if we retain this. We have provided, in another clause, that no session of the general court shall last beyond one hundred days; but such a restriction is entirely useless, if they may have half a dozen sessions in the year. The motion which I made upon the subject, and which finally passed, only limited the sessions to one hundred days; but if the legislature have the right to adjourn over a week, and then hold another session, it seems to me that the first provision is entirely useless. I make this suggestion for the consideration of the gentlemen of the Convention as worthy of attention.

Mr. LORD, of Salem. I desire to call the mind of the President to a matter of construction. I take it that the old instrument is to be construed as entire. In the old Constitution, chapter first, under the Frame of Government, section first, provides, that the legislative body shall assemble every year, on the first Wednesday of May, and at such other time as they shall judge necessary. In the tenth article of the Amendments to the Constitution, the first Wednesday of May was changed to the first Wednesday of January; and the phrase "But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor," was merely put into that article, to show that the entire first section was not to be abrogated; that they meant simply, to change the time of meeting. It was introduced for that purpose, and to show that the framers of it did not mean to change the power of the general court to sit when they should deem it necessary. But this Convention, having changed that first article, it seems to me that the proviso that it shall not be altered, falls also, and that the change is perfect and complete. I make these suggestions as worthy of consideration, and not because I want to have those words stricken out, for I agree, somewhat, with the opinions of the gentleman from Lowell, that, after all, this legislature, which we treat so contumeliously, is a

pretty important branch of this government, and ought to have some power, and that they should come together whenever the exigencies of the public require it. But certain, it does, as suggested by the gentleman from Taunton, (Mr. Morton,) render nugatory the provision limiting the session to one hundred days; because they may have a session the next day after the hundred days have expired, and take another hundred days, and get their pay for it. I merely call the attention of the presiding officer to this matter of construction, to know—when we consider the form of the matter which was original in the Constitution, and that the tenth amendment only changed the day, and provided that this other matter of the first article, should not be repealed by that—whether, when we come to repeal the first article, the other does not fall with it?

Mr. DANA, for Manchester. A single word upon this matter. As I recollect it, there was no debate or consideration of that point, when the Report was made from the Committee, of which the gentleman from Worcester, (Mr. Allen,) was chairman. There was no debate upon the point whether we should prevent the legislature from meeting without the consent of the governor. I found no amendment debated, striking out the grant of power, and I supposed the Convention had not intended to strike it out, and the Revising Committee did not feel authorized to do so.

In the next place, I should feel reluctant to say that the legislature never shall meet but by the consent of the governor. Suppose that, after the January session, in the autumn, or in the early part of the winter, there should be war, insurrection, or invasion, and the governor was not to be relied upon, should the people of the Commonwealth be put into such a situation that they cannot meet in legislature, to provide the necessary measures of defence and safety?

I have no idea that the legislature will be likely to meet unnecessarily, but would we like to say that they never should meet in extra session unless by the call of the governor?

As to pay, they may have extra pay now, if the governor calls them together, and they ought to be paid if they come together upon an exigency of the public affairs, without the consent of the governor.

Mr. HALE, of Bridgewater. I would inquire of the gentleman for Manchester, in what way the general court should hold a session in such case, unless by a call of the governor, or by having adjourned to meet again on a given day? We ought certainly to provide some mode by which they can be called together in case of great emergency.

Mr. DANA, for Manchester. I can say to the gentleman from Bridgewater, that if any exigency should arise, rendering it necessary for the legislature to meet, and the Constitution says that they may meet, they will find out a way to meet. The independence and self-subsistence of the legislative power, and representative department, is an essential idea in the Anglo Saxon race. If the Constitution says they *may* meet, and the exigency says they *must* meet, I think they *will* meet.

Mr. GARDNER, of Seekonk. I hope this section will stand as it is. In 1746, a message was sent to the then governor of the Commonwealth, (Governor Shirley,) to call the legislature together, to settle a boundary question between this State and the State of Rhode Island. Notwithstanding that this was felt to be a question of great importance, the governor did not feel obliged to call an extra session, and the commissioners of Rhode Island ran an *ex parte* boundary line, from which all the difficulties that have ever arisen between the two States, has originated. I think that that is one essential reason why this provision should be retained. As the gentleman for Manchester says, the legislature will find a way to meet, if it be necessary that they should.

The first chapter on the "Frame of Government," as amended, was then finally passed.

The second chapter was then read by the Secretary, containing provisions in regard to the Senate districts in which senators are to be chosen; qualifications of candidates; manner of electing senators; examination of election returns; quorum of the Senate; impeachments, &c., and it was finally passed without farther amendment. It is as follows:—

[ARTICLE 1. There shall be annually elected by the inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be senators, for the year ensuing their election; and the Senate shall be the first branch of the General Court. For this purpose, the General Court, holden next after the adoption of this Constitution, and next after each decennial census thereafter, shall divide the Commonwealth into forty districts, composed of contiguous territory, and as nearly equal in population as may be: *provided*, that no town or ward of a city be divided therefor. Each district shall be entitled to elect one senator, who shall have been an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen.]

ART. 2. There shall be a meeting on the *Tuesday next after the first Monday in November*, annually, forever, of the inhabitants of each town and city in this Commonwealth, to be called and warned in due course of law, at least seven days

before the day of *such* meeting, for the purpose of electing senators; and at such meetings every qualified voter shall have a right to give in his vote for a senator for the district of which he is an inhabitant.

The selectmen of the several towns shall preside at the town meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for a senator, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and, in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription expressing the purport of the contents thereof, and delivered by the town clerk of said towns to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday in January annually; or it shall be delivered into the Secretary's office seventeen days at least before the said first Wednesday in January; and the sheriff of each county shall deliver all such certificates, by him received, into the Secretary's office, seventeen days before the said first Wednesday in January.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, shall have the same privilege of voting for a senator, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same Tuesday next after the first Monday in November, at such place in the plantations respectively as the assessors thereof shall direct; which assessors shall have like authority for notifying the *voters*, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated, (qualified as aforesaid,) shall have the privilege of giving in their votes for a senator, in the town where the inhabitants of such unincorporated places shall be assessed, and be notified of the place of meeting by the selectmen of the said town for that purpose, accordingly.

[ART. 3. The Governor and Council shall, as soon as may be, examine the returned copies of the record provided for in article second of this chapter, and ascertain who shall have received the largest number of votes in each of the several senatorial districts, and the person who has so received the largest number of votes in each of said districts shall be a senator for the following political year; and the governor shall cause each of said persons, so appearing to be elected, to be notified at least fourteen days before the first Wednesday in January of each year, to attend on that day, and take his seat accordingly.

ART. 4. Not less than twenty-one members shall constitute a quorum for doing business; but a less number may organize, adjourn from day to day, and compel the attendance of absent members.]

ART. 5. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives against any officer or officers of the Commonwealth, for misconduct and maladministration in their offices; but, previous to the trial of every impeachment, the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party, so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

The Secretary was then directed to read the third chapter, containing provisions in relation to the House of Representatives—the mode of their election, and the qualifications of voters; mode of apportioning representatives among the several towns and cities by the Senate; division of cities into districts; time of electing representatives; fines on towns neglecting to elect; qualifications of representatives; power of the House in regard to impeachments; the origination of money bills; and the number of members constituting a quorum. It was read, as follows:—

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing [less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inbabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain, over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year one thousand eight hundred and fifty, until a new census shall be taken.

ART. 3. The Senate at its first session after this Constitution shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session next after each decennial State census thereafterwards, shall apportion the number of representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more representatives, shall be increased or diminished in the same proportion as the population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

ART. 4. No town hereafter incorporated, containing less than fifteen hundred inhabitants, shall be entitled to choose a representative.

ART. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years: *provided, however*, that no one district shall be entitled to elect more than three representatives.]

ART. 6. The members of the House of Representatives shall be chosen on *the Tuesday next after the first Monday in November*, annually; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no farther: but in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

ART. 7. The House of Representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution.

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

ART. 9. The House of Representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the Senate.

ART. 10. All money bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

ART. 11. Not less than *one hundred* members of the House of Representatives shall constitute a quorum for doing business.

Mr. EARLE, of Worcester. I move to amend this chapter, in the second article, by striking out these words:—

Every town containing eight thousand inhabitants, and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants may elect four representatives.

Also to strike out the word "twelve" in the next line below, and insert in its place the word "four." The part which I propose to strike out is mere surplusage. The amendment will not change the meaning of the article, while it will divest it of unnecessary verbiage. The article, as it now stands, reads thus:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

If it be amended as I propose, it will then read as follows:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every city or town containing over four thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over four thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which be-

long to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

Mr. OLIVER, of Lawrence. I would ask whether the article, if thus amended, will be consistent?

Mr. EARLE. The amendment will not change the meaning of the article at all. It will rather make it more consistent, if anything.

Mr. BUTLER, of Lowell. I think that this is an amendment of substance rather than of form, and therefore, I must object to it.

Mr. EARLE. I repeat, that it does not change the subject at all. When I proposed this amendment, at the time the article was under consideration by the Convention, it was objected, that the Committee on Revision would take out all surplusage, and this not having been done here by the Committee, I propose to strike it out now.

Mr. BUTLER. My reason for thinking this a substantive amendment, is this: You go on providing for the representation of towns progressively, till you get up to towns having a sufficient number of inhabitants to entitle them to be chartered as cities. Yet the gentleman from Worcester proposes to strike out these words: "Every city or town containing twelve hundred inhabitants, may elect four representatives." I really do not see any necessity at all for this amendment.

Mr. EARLE. I would like to read the article again, so that the Convention may see how the matter will stand. [Mr. Earle accordingly read the article as he proposed to amend it, as given above.] That is precisely the provision now; and if we allow these words to stand, we might as well go on repeating the same words, until we get up to fifty representatives. It is mere surplusage. If the Convention choose to have it, they can say so; and if not, they will strike them out.

Mr. SCHOULER, of Boston. I am not quite certain about the amendment of the gentleman from Worcester being surplusage; but I feel pretty sure, that there is some surplusage in the first part of the article. In the first place, it says: "In order to provide for a representation of the citizens of this Commonwealth *upon a principle of equality*, every corporate town," &c. And I find also in the first article these words: "There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality." Now, all this rhodomontade about being "founded upon the principle of equality," I hold to be not mere surplusage, but something a great deal worse, [laughter]; and if we are to amend on the principle of striking out all the "surplusage," it strikes me there will be very little of your new Constitution left. [Renewed laughter.]

The question being taken on the amendment, it was agreed to.

Mr. MORTON, of Taunton. I would ask the attention of the Convention to the eighth article as it is prepared by the Committee. It is as follows:—

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

It seems to me that the Committee have omitted a very important provision of the old Constitution. I will, therefore, read it. It will be found on the eightieth page of the Constitution now in the hands of members, and is as follows:—

III. Every member of the House of Representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, [and have been seized in his own right of a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds;] and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

This latter clause, "and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid," which I hold to be exceedingly important, is here entirely omitted. I think it should be supplied. I therefore move to amend the eighth article of this chapter by adding this clause to it, so as to make it read:—

ART. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Mr. BOUTWELL, for Berlin. If gentlemen will look at the Constitution as it at present stands, they will perceive that there are certain words in the article referred to by the gentleman from Taunton, enclosed within brackets, involving a property qualification for members, which words were stricken out by the Convention of 1820, leaving the article in a somewhat inelegant, if not unintelligible, condition. We have, of course, no authority to say, that no other words than those within the brackets were stricken out at that time. The qualification there alluded to, I take it, referred entirely to property; and there can be no doubt, that the design of the Convention of 1820 was

to do away with that qualification only, because the qualification of having been a resident in a town one year preceding election, is a qualification that, by the terms of the present Constitution, cannot cease after it is obtained; but the property qualification may cease.

Mr. MORTON. It seems to me there need be no difficulty in understanding the provision of the present Constitution in regard to this, as it now stands. I am aware, that originally, two qualifications for a representative were required: A qualification of property, and also a qualification in regard to residence; but the amendment of 1820 struck out the qualification of property, leaving that of residence. I admit that the manner in which this provision was left, was very inelegantly expressed. But, if gentlemen will read the provision as we now receive it, I maintain, that it is capable of only one single construction. It may not, perhaps, be expressed in the best possible way, but it certainly does provide for a residence of one year in a town or city prior to election. That is an indispensable qualification, and the true meaning of it I hold to be, that it shall continue during the period of service: that when a representative changes his residence into another town, or county, or State, he ceases, by that act, to represent the town for which he was elected. Believing, therefore, that this is a valuable provision, I hope that we shall retain it in the revised Constitution.

Mr. BUTLER, of Lowell. I do not understand how the amendment of the gentleman from Taunton will reach what he wants to reach, and I should object to it, somewhat, if we could get at it. The regulation now is, that every member of the House of Representatives shall have been for one year at least, next preceding his election, an inhabitant of the town he shall be chosen to represent. He shall have lived there a year before he is elected. Now, if he has lived there a year before he is elected, there is his full qualification; and after this is done, I do not see how a man can help having lived there. He may move away the next day, but yet, he has lived there a year.

Mr. MORTON. He ceases to represent the town immediately on his ceasing to be qualified, according to the present Constitution.

Mr. BUTLER. That is one of the reasons why the Constitution needs revising; it is one of the best arguments I could have, and I thank the gentleman for calling my attention to it. When the Constitution was originally made, there were two qualifications; one was, that he should have lived there a year, so as to have learned the wishes of the inhabitants; and the other was, that he should have so much money. When the amendment was made, taking out the money qualification; and Judge Cushing came to print his edition and put in the brackets—for which he has got a patent—having done that, what happened? That last line which used to refer to the money qualification, and which provided that when he ceased to be a freeholder, he ceased to represent the town —when he ceased to have property, he ceased to be qualified as aforesaid—stands now to refer to something that is wholly incongruous with it. I submit to my learned friend from Taunton, whether it is not just like a *seizin*, in a deed, it is either broken at once, or it is never broken. Now, we propose to say, that although it was never broken, still it may be broken afterwards. I appeal to him as a lawyer, if I am not correct in that position. I insist that this being qualified and "ceasing to be qualified as aforesaid," refers simply to the freehold qualification, and not to any other part of the Constitution. When the property qualification was stricken out, it did not make good grammar or good sense to leave it there; it made it say that a man should cease to live not before he was elected, but after he was elected; and that is one of the reasons first, against Mr. Cushing's copyright, and second, for the revision of the Constitution. I think this is a valuable privilege in a town. If a town chooses to elect a man who has lived there and has learned its habits, its manners, and the wants and wishes of the people, and he has had the qualification of living there a year before he is elected, and comes down here to represent them; but yet, he chooses to move away into another town,—now I take it that he is still elected from that town that sent him here. If they have chosen a man to represent them, they want to have him here, and what right have we to take away their privilege? He knows what their wants and wishes are, for he has lived there long enough to be qualified; and if qualified, he cannot be unqualified by simply crossing an imaginary line. For one, I am not willing that such an amendment should go in; for it is still an open question.

Mr. MORTON. I would not say another word, had it not been that I was appealed to as a lawyer, which is somewhat of a misnomer, on the part of the gentleman from Lowell. I know that I have grown somewhat rusty upon that subject, but still, I have kept in mind a few old rules of construction, which I think are now sound and bright, and as good as new; and in answer to the gentleman, I will refer to them. In the first place, it is one of the most ancient and well established rules of construction, that in

construing a statute, or any other public instrument, you must so construe it as to give effect to all the language used in it; and if it is not exactly consistent, if some of it appears to have one definite meaning, yet, if taking it all together, you can give a construction to it to meet what is well settled, you are bound to give such a construction. Now, if you take it all together with a little latitude in construing the first part of it, you give a meaning to the whole of it. It provides that he shall have been an inhabitant for one year next preceding his election, and shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid. If you take a little liberal construction, this last clause will be applicable to the residence; residence is what they are aiming at, as this is necessary in order to give entire effect to the last clause. The qualification refers to residence, and there is nothing else that it could refer to; and therefore, when he ceases to be a resident of that town, he ceases to be qualified. I suppose there was some wisdom, and some good sense, and some knowledge of English, in the Convention which preceded us thirty-three years ago; and it seems to me that we are not at liberty to assume that they did not know what they were saying, and that the language they used was a perfect nullity, with no meaning whatever. I suppose that respectable and learned body had an idea that they were adopting such language as would convey their meaning; and I am not willing to adopt a construction, the effect of which, would be to stultify that Convention of great men. Now, I differ with the gentleman from Lowell in regard to the reasonableness of it. I hold that a man, in order to be a representative of a town, should live in that town, in order not only that he may know what are the views and intentions, and wishes of the inhabitants, but in order that his interest may be identified with their interests. If a man is chosen, who the next day moves away into South Carolina, or New Orleans, or perhaps to some part of Europe, according to this construction of the Constitution, he can even come across the Atlantic in a steamer and take his place here in the House of Representatives, when he has no more interest in the welfare of the town which he formerly lived in, than the Queen of England has. In that point of view, I think the construction which I have given is the sound one, and I hope it will be retained.

Mr. BOUTWELL, for Berlin. I beg leave to make a suggestion to the Convention upon another point. Some gentlemen have desired that we should propose specific amendments to the Constitution. I dare say, such a motion will be made before we adjourn to-night; but already several questions have arisen upon this floor as to what the Constitution is, because it is so difficult to analyze the existing provisions so as to determine just how far new amendments go in nullifying them. One word upon this particular point now under discussion. In 1780, the Convention provided that all persons should have two qualifications to entitle them to hold seats in the House of Representatives; one was, that they should have lived in the town they were chosen to represent, one year preceding their election; and the other was, that they should have a certain amount of property. In consequence of that, they said that a person not thus qualified should cease to represent the town from which he was chosen. I will give to the Convention of 1780 some credit for intelligence, although it so happens that the amendment alluded to, did not pass, by the by, until 1840; but they did not intend that a person should cease to be qualified, from any circumstance over which he had power of his own will, but on account of contingencies to which he was, or might be liable. There were two qualifications; he could rid himself of the one, but he could not rid himself of the other. If he had lived in the town for twelve months previous to his election, that qualification stood by him. But, if he possessed a hundred pounds, and should lose it in speculations, and become bankrupt, he then ceased to be qualified to represent the town. Therefore, the Committee did not follow the interpretation given by the gentleman who has had charge of this for twenty years. They came to the conclusion that when the people annulled the property qualification, they also annulled the result of it.

Mr. SCHOULER, of Boston. A case came up during the last session of the legislature, when a man was elected in the town of Blackstone, but previous to the adjournment of the House he had removed to the town of New Market, N. H. In consequence of this fact, the subject was referred to a committee, and the committee reported that the seat was vacant; but as it was only a day or two before the adjournment of the legislature, no action was taken upon it, and the report was laid upon the table without any decision being made. It was the decision of the majority of the committee, that the seat was vacant, under the eighth article of the Constitution. Now, Sir, I should like to understand this matter. I agree with the gentleman for Berlin, and I thought so last winter, that the article was ambiguous, and I want to make sense of it. I should like to know whether, under this article, a person could continue to represent a town even after he had moved out of the State; for if so, I think it should be amend-

ed. There is no propriety whatever in allowing a person to represent a town after he ceased to be an inhabitant of the State, although it might not be so bad if he merely removed from one part of the State to another part; but an inhabitant of another State certainly cannot represent the people of this State. We had up last year—and that is what brought the matter before us—one of the most important bills, that with regard to the liquor law; and there are many gentlemen here who will recollect it was defeated by a tie-vote, the gentleman from Blackstone voting upon one side. There was another bill passed here, assessing taxes to the amount of $300,000 upon the people of the Commonwealth; and now the question for this Convention to decide is, whether a man who has moved out of this Commonwealth and is an inhabitant of another State, has a right to come into our legislature and vote to tax our people. If the construction at present is, that a man shall continue to be a representative after he has removed his residence from the State, I think this article should be amended so that he shall cease to be a representative after he has left the county or town where he was chosen—and above all, when he leaves the State.

The question being taken on the amendment of Mr. Morton, it was not agreed to.

Mr. LORD, of Salem. I desire to know whether this is not a matter of right that this should go in, if anybody desires it? It is printed as a part of our present Constitution, and no action of the Convention has stricken it out. I desire to have it put in as we always have had it in, and inasmuch as there is no authority that I can see for leaving it out.

The PRESIDENT. It seems from the Report of the Committee, that their judgment was that these words are not a part of the Constitution. They have so reported. The Chair cannot say that they are such a part of the Constitution as will go into the present draft upon the claim of a single member; and therefore the question has been submitted to the judgment of the Convention.

Mr. LORD. I desire to ask the Committee what draft of the Constitution they look upon as authentic. I am not sure that the Convention did not reject this on the ground that it should go in as a matter of right and not as amendment. If those words are a part of our present Constitution, they belong there as a matter of right, because this Convention has not stricken them out.

Mr. WILKINSON, of Dedham. I understand that the Chair rules that these words are not in the Constitution?

The PRESIDENT. The gentleman misunderstands the Chair. The Chair understands that the Committee have reported that they are not a part of the Constitution.

Mr. WILKINSON. It seems to me that there ought to be some way for the Convention to settle the question.

The PRESIDENT. The Chair has not ruled that they are not a part of the Constitution, for if that had been the ruling, the Chair would not have submitted the motion of the gentleman from Taunton, (Mr. Morton). The question has been submitted to the Convention, and the Convention have decided not to insert the words.

Mr. WILKINSON. It strikes me clearly that the words are in the present Constitution. I see that the article now reported by the Committee is entitled on the margin "qualification." I therefore supposed that a person in order to be elected must be an inhabitant; that is a qualification which he should possess at the time of the election. He must have been an inhabitant for the next twelve months preceding his election, and that necessarily implies that at the time of his election he shall be an inhabitant, for he cannot have been an inhabitant for the twelve months next preceding his election, unless at the time of his election he is an inhabitant. Well, then, inhabitancy is one of the qualifications necessary to constitute a representative, and when the Constitution provides that he should have all those qualifications, and that they should continue till the election, it seems to me clear that the limitation implies the qualification of inhabitancy. It seems to me that inhabitancy is a qualification, and that the qualification must continue. If, however, as seems to be the opinion of some gentlemen, it is best to alter the Constitution, then it may be proper to introduce such a resolution. At any rate, it is proper that we should have a perfect understanding of this matter. It ought to be settled one way or another, and therefore it seems proper, if the President rules this an amendment in substance, and therefore out of order, that the question should at sometime be raised.

The PRESIDENT. The Chair did not rule that. It stated the question to the Convention, and the Convention has voted upon it.

Mr. GARDNER, of Boston. Has the Chair decided the motion of the gentleman from Boston?

The PRESIDENT. It has been decided by the Convention.

Mr. WILKINSON. I move to reconsider the vote by which the motion of the gentleman from Taunton, (Mr. Morton,) was rejected.

Mr. DANA, for Manchester. I think it possible that there is a little misapprehension in the minds of members of the Convention. By turn-

ing to page eightieth of the Rules and Orders of the Convention, you will find in the middle of article third, of section third, chapter first, a part put in brackets. It is assumed, in the debates, that the putting of that part in brackets is a legal act done by some authority, and that all not in brackets is not a part of the Constitution. That is not so. The people of Massachusetts have never adopted those brackets in any way.

The following is the third article:—

III. Every member of the House of Representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, [and have been seized in his own right of, a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds;] and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Here you see the bracket is put after the word "pounds" instead of after the word "aforesaid," as it should have been. You may ask how the brackets came there. The answer is this: In 1780, the whole of the third article stood, requiring two qualifications, that of previous residence, and a freehold of the value of one hundred pounds, and the provision that a member should cease to represent a town immediately on his ceasing to be qualified as aforesaid.

If, then, gentlemen will turn to the 114th page of the same book, at the bottom of that page they will find this amendment:—

No possession of a freehold, or of any other estate, should be required as a qualification for holding a seat in either branch of the General Court, or in the Executive Council.

Then the question is—and it is an open question, and one never ruled upon by the people of the Commonwealth—did the passage of that amendment strike out all of the latter part, or only a portion of the latter part of the third section? Judge Cushing saw fit to put the brackets after the word "pounds" in his edition of the Constitution which he got up for sale, as a private matter. Another edition might have put it after the word "aforesaid." The legislature has printed the Constitution after Judge Cushing's edition, but only for convenience, and not enacting constitutional law by brackets.

The words "and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid," have no more virtue than the part in brackets. The fact that the words stand within or without the brackets, has no effect whatever. Then it is an open question as to what is the effect of the last clause on page 114, which I have read. The Committee were of opinion that it only affected the qualification of freehold, because the qualification that a man should have resided for one year, is a thing which either existed at the time or not, and if it did exist at the time, it never ceased to exist afterwards. Could a man ever cease to have been twenty-one years of age, after he had once been so at a given time?

Mr. GRAY, of Boston. I agree that the gentleman for Manchester has stated the question fairly, and that is, that gentlemen, whichever side they take, are not to rest their position upon these brackets. I am very sorry that this digest was ever made and adopted. If this were the proper occasion, I could point out very important blunders in this respect.

If we take the text of the Constitution of 1780, and as it existed until 1840, we find the third clause as it stands, as it has been read by the gentleman for Manchester, beginning with the words, "every member," and ending with the word "aforesaid." No person raised a construction upon that. But, in 1840, the people adopted an amendment, in which there was a clause, very clear and distinct, that no possession of freehold or other estate should be required as a qualification for either branch of the legislature, or the council. Now, I am ready, with the gentleman for Manchester, to reconcile those two clauses.

Every member of the House of Representatives shall be chosen by written votes. But what qualification must he have? What incident, accident and possession, must he have to qualify him for a seat? He must, for one year preceding his election, have been an inhabitant of the town, and "he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid." I contend that upon every fair principle of construction, that the clause, "he shall cease," &c., refers to the first part of the qualification, as well as to the last; refers to the residence, as making a part of the qualification. It is a question of construction. I say it is a question upon which I never entertained a doubt; and, until the decision of the Committee, I did not suppose that any other one did. I have heard that in this Committee, or in some other committee, the question was raised upon striking out this qualification. I do maintain that this is an essential part of the qualification, and the words, "he shall cease," &c., refers to one as well as to the other. The last part being qualified by the act of 1840, we need say nothing about that. The question is this, and it is an important one: Shall the Convention now do what they have not yet done,

shall they abolish the qualification of residence? I think that has not been done, and if it is to be done, I object to it.

This is a question of so much consequence, that I venture to ask the yeas and nays upon the motion to reconsider.

The yeas and nays were ordered—one-fifth of the members present voting therefor.

Mr. LORD, of Salem. I desire to call the attention of those gentlemen who think that this does not relate to anything but the freehold, to this point, whether this proposition of the Constitution requires that the person to be elected shall be an inhabitant of the town at the time of his election? And if they hold that he must be an inhabitant of the town at the time of his election, where do they get that proposition, except from the phraseology that he must have been an inhabitant for twelve months next preceding? Then, if he must have been an inhabitant for twelve months next preceding, and if that phraseology, by its own force imputes a present inhabitancy, the same qualification which requires a twelve months' residence requires a present inhabitancy. If gentlemen will remark the next article as it stood in the original Constitution, they will perceive that the same phraseology is used, and there nobody doubts that present inhabitancy is required. The fourth article in the original Constitution, was this: —

IV. [Every male person, being twenty-one years of age, and resident in any particular town in this Commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.]

Now, Sir, does that require present inhabitancy?

The hour of two o'clock having arrived, the President adjourned the Convention until three o'clock, P. M.

## AFTERNOON SESSION.

The Convention reassembled at three o'clock, P. M., and resumed the consideration of the unfinished business of the morning session.

Mr. GRAY, of Boston. It will be recollected that I this morning moved the yeas and nays upon the question now before the Convention. I am unwilling, when not compelled to do so, to make a motion which merely takes up the time of the Convention, or even to appear to make such a motion. I find that the question of residence of members as a qualification, is disposed of, to a great degree, by another article, and though I still adhere to my argument, I do not think it important that the yeas and nays should be called, and perhaps other gentlemen who voted with me will think so also. I therefore move a reconsideration of the vote by which the yeas and nays were ordered. I trust gentlemen will observe that this in no way affects my argument as applied to the main question.

Mr. LORD, of Salem. I should like to have the gentleman from Boston tell us what other provision he refers to, as disposing of this question, to some degree?

Mr. GRAY. I refer to article eighth of chapter third of the new Constitution. I had the impression when I made the motion, that that disposed of the whole question of qualification, but it does not, and my justification is, I had but little time to go over the pamphlet containing the Report of the Committee. Though I think it an important question, still, finding the matter standing in a different position from what I had supposed, I do not wish to have the time of the Convention taken up by calling the yeas and nays.

The question was then taken upon the motion to reconsider the vote by which the yeas and nays were ordered, and it was decided in the affirmative.

Mr. GRAY. I now withdraw my motion for the yeas and nays.

The question then recurred upon the motion offered by Mr. Wilkinson, to reconsider the vote by which the Convention rejected the motion of the gentleman from Taunton, (Mr. Morton).

Mr. GRAY. I beg leave to make a remark or two. It has been conceded, I believe, that if there is anything in the old Constitution which has not been struck out, it goes into the new Constitution, as a matter of course, and as a matter of right. Now, Sir, it appears to me to be a clear case, as it did to my friend from Salem, that these words have not been rightfully struck out by the Committee; that they have never been struck out by the Convention. I make these suggestions to bring the matter once more to the consideration of the Chair, and of the House. It is not a question whether we had better do one thing or the other, but whether they are not left in by the action of the Convention.

I wish merely to make myself fully understood. Article eighth of chapter third, of the Report of this Committee, provides that every member of the House of Representatives shall have been, for one year next at least, preceding his election, an inhabitant of the town he shall be

chosen to represent. That, Sir, as I have stated, provides, in a great degree, for the question of residence; but there is another branch which is not provided for, though, as I contend, it is provided for in the old Constitution, and that is, that he shall cease to be a representative when he ceases to be a resident. Now, the Committee have struck out those words; and what I contend for, is, that the Convention never did strike them out, and every-body agrees they are in the old Constitution, and the Committee in doing it committed a mistake; and they should go in here as a matter of course.

Mr. CHAPIN, of Worcester. The question, I believe, is on the motion of the gentleman from Dedham.

The PRESIDENT. The question is on the motion to reconsider the vote by which the amendment of the gentleman from Taunton, (Mr. Morton,) was rejected.

The question was then taken, and on a division, there were—ayes, 39; noes, 103.

So the motion to reconsider was not agreed to.

Mr. LORD, of Salem. I move that all that portion of chapter third which relates to the House of Representatives, involving articles two, three, and four, be stricken out of this chapter, and submitted to the people as a separate amendment. The articles are as follows:—

ART. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain, over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year eighteen hundred and fifty, until a new census shall be taken.

ART. 3. The Senate, at its first session after this Constitution shall have been adopted, and at its first session after the next State Census shall have been taken, and at its first session next after each decennial State Census thereafterwards, shall apportion the number of Representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more Representatives, shall be increased or diminished in the same proportion as the population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

ART. 4. No town hereafter incorporated, containing less than fifteen hundred inhabitants, shall be entitled to choose a representative.

Mr. LORD. I do not think that we shall do our duty to those who sent us here, and who certainly have a right to have a separate vote upon amendments so important as these, unless we provide that right. I think it is desired by the people that they should pass upon all very important changes, upon their merits separately. I do not believe that the people of this Commonwealth want to have things that they like, and things that they do not like, mixed together, and then to be told "you must take both, or get neither." I think the people of the Commonwealth are as capable of deciding on what they want, as this Convention is. When gentlemen profess to have so much respect for the people, I want them to understand that I think the people have quite as much discrimination as we have, and that they are quite as capable of judging of what they want, as we are to judge for them; and I have no hesitation in saying that they would prefer to pass upon this question of the basis of representation, without having it sweetened with something the Convention thinks they would like. The Convention in effect, says: "We want the people to take this basis of representation which we have prepared for them. We know that the natural sense of justice inherent in the people will never allow them to pass this system as it is; but we will sweeten it to make it palatable, and thus we will compel them to take this thing which they do not like, with something which they do like."

Sir, I desire to have somebody point out to me any difficulty that exists in the way of these three articles being put at the end of the eight propositions on which you propose to take the vote of the people separately, and to make them proposition number nine, for the same purpose, and say—as we propose to say in regard to the other eight propositions—"If these articles be adopted and ratified, then they shall be a part of

the Constitution; and if they are not adopted and ratified, then the present basis shall stand as the basis of representation until it is changed by some competent authority?" I want to know the difficulty in the way of this? What is it? Where is it? Is it not as easy to submit separately a question of such vast moment and importance as this, as any one of the eight propositions on which you propose to take a separate vote? Quite as easy, Mr. President, and much more desirable; but the real fact is, that it is an unjust proposition, and gentlemen know it; and, knowing that, they sagaciously conclude that the people will not swallow it without some sweetening; that the people will reject it unless something is put along with it to make it palatable.

My idea is—and the people will eventually acknowledge that it is the true one, whatever may be done by this Convention—that no one proposition which may be popular, ought to be compelled to drag after it an unpopular one, nor should an unpopular proposition be permitted to hang, for its success, upon the skirts of a popular one. Nobody in this Convention believes that there is the slightest difficulty or obstruction in the way of putting this matter as a separate question to the people—except that party in the Convention who fear to trust the people, and who are determined to dragoon them into the adoption of this measure, if they can do so by any possible means. Talk not to me about "trusting the people," when you dare not say to them "Will you have this, or will you have that?" Sir, I was surprised at the argument of the gentleman for Berlin, in regard to this question, when he professed to entertain great fear that if the question of the basis of representation were put alternately, as between two systems, there would be danger of losing both! Sir, in adopting the amendment which I suggest, we do not propose to do anything except to say that, in case the system you have now incorporated into your Constitution should not meet the approbation of the popular will, the system as we now have it shall remain as it is. There is, therefore, none of the danger of which the gentleman speaks; and the only objection to taking this question separately that I can see, is, a fixed determination to cram this system down the throats of the people, at the risk of losing all the other amendments, or of remaining upon the old Constitution. I have heard no reason that is at all satisfactory to my mind—nor have I heard any that I think will satisfy the people—why particular articles should be taken from the Constitution and put by themselves, while others are not so. I regard this question of representation as one of the most vital questions that has come before us; and, in reference to it, I deem it so important for the people to know who are willing that they should pass upon it by itself—a proposition which, in my judgment, the people would reject with scorn, as an injustice that they would be unwilling to perpetrate—and also because, as a member of this Convention, I feel desirous that my constituents should have an opportunity of voting simply "yes" or "no" upon this matter, I ask, that when the question is taken upon my amendment, it may be taken by the yeas and nays.

The yeas and nays were accordingly ordered, on a division, the vote being—ayes, *55*; noes, 163.

Mr. HILLARD, of Boston. As it is so soon after dinner, I wish to be allowed to recite, for the benefit of the Convention, and in answer to the suggestion of my friend from Salem, (Mr. Lord,) an Eastern apologue.

Once upon a time an Arab was sick unto death, and he vowed a vow to the prophet that he would offer for sale his only camel, for five pieces of gold, if he were restored to health. When he got well he felt sorely perplexed as to how he should keep his vow—a perplexity, I fancy, something like that which is experienced by the majority of the Convention, in regard to the opinions expressed, and promises heretofore made, and the mode in which they will show to the people, next November, how they have been true to those opinions and promises.

But the way that the Arab got out of his difficulty, was this: He sent his camel to the market to be sold, but he sent it with a cat tied round its neck, and he ordered the crier to proclaim: "The camel for five pieces of gold, and the cat for one hundred, but both must be sold together." Thus there arose a saying which passed into a proverb: "How cheap the camel would be, if it were not for that cursed thing around its neck!"

So it is with the discordant provisions contained in the first proposition to be submitted to the people. The cat and the camel must be sold together. He who wants only one, must take both or none. [Laughter.]

Mr. LORD. I think the question should embrace the second, third, fourth, and fifth articles. When I moved the amendments, I only included the second, third, and fourth. I now move to add the fifth, as follows:—

ART. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years:

*provided, however*, that no one district shall be entitled to elect more than three representatives.

As the order for the yeas and nays did not include the question on the fifth article, I hope it may, by general consent, be included without the necessity of calling for another division.

No objection was made, and the fifth article was included in the question to be taken by the yeas and nays, which were then taken, and resulted—yeas, 91; nays, 205—as follows:—

YEAS.

Abbott, Alfred A.
Adams, Benjamin P.
Aldrich, P. Emory
Aspinwall, William
Ayres, Samuel
Bartlett, Sidney
Beach, Erasmus D.
Bigelow, Jacob
Bradbury, Ebenezer
Bradford, William J. A.
Braman, Milton P.
Bullock, Rufus
Choate, Rufus
Cogswell, Nathaniel
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Davis, John
Davis, Solomon
Denison, Hiram S.
Eaton, Lilley
Ely, Homer
Farwell, A. G.
Fowler, Samuel P.
French, Charles H.
Gardner, Henry J.
Gould, Robert
Goulding, Dalton
Gray, John C.
Hale, Artemas
Hammond, A. B.
Haskell, George
Hathaway, Ebnathan P.
Hawkes, Stephen E.
Hayward, George
Heard, Charles
Hersey, Henry
Hewes, James
Hillard, George S.
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Hubbard, William J.
Hunt, William
Hurlburt, Samuel A.
Jackson, Samuel
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Kuhn, George, H.
Lincoln, Abishai
Littlefield, Tristram
Livermore, Isaac
Lord, Otis P.
Lothrop, Samuel K.
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Morey, George
Morss, Joseph B.
Morton, Marcus
Noyes, Daniel
Oliver, Henry K.
Paige, James W.
Park, John G.
Parker, Adolphus G.
Parker, Joel
Perkins, Daniel A.
Perkins, Jonathan C.
Plunkett, William C.
Pomroy, Jeremiah
Putnam, George
Rantoul, Robert
Read, James
Reed, Sampson
Sargent, John
Souther, John
Stetson, Caleb
Stevens, Charles G.
Stevenson, J. Thomas
Talbot, Thomas
Thompson, Charles
Tyler, John S.
Upton, George B.
Walcott, Samuel B.
Wheeler, William F.
Wilbur, Joseph
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo

NAYS.

Adams, Shubael P.
Allen, Charles
Allen, James B.
Allen, Joel C.
Alley, John B.
Allis, Josiah
Alvord, D. W.
Austin, George
Baker, Hillel
Ball, George S.
Bancroft, Alpheus
Bartlett, Russel
Barrett, Marcus
Bates, Eliakim A.
Beal, John
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Bird, Francis W.
Booth, William S.
Boutwell, Geo. S.
Boutwell, Sewell
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Artemas
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Bullen, Amos H.
Burlingame, Anson
Butler, Benjamin F.
Caruthers, William
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Clarke, Stillman
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Henry W.
Cushman, Thomas
Cutler, Simeon N.
Dana, Richard H., Jr.
Davis, Ebenezer
Davis, Isaac
Davis, Robert T.
Dean, Silas
Deming, Elijah S.
Denton, Augustus
Duncan, Samuel
Dunham, Bradish
Durgin, John M.
Eames, Philip
Earle, John M.
Easland, Peter
Eaton, Calvin D.
Edwards, Elisha
Edwards, Samuel
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Gardner, Johnson
Gates, Elbridge
Gilbert, Wanton C.
Gilbert, Washington
Giles, Charles G.
Gooch, Daniel W.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hallett, B. F.
Hapgood, Seth
Harmon, Phineas
Hayden, Isaac
Hazewell, Charles C.
Heath, Ezra, 2d,
Hewes, William H.
Heywood, Levi
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Howard, Martin
Howland, Abraham H.
Hoyt, Henry K.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Johnson, John
Kendall, Isaac
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawrence, Luther
Leland, Alden
Little, Otis
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Moore, James M.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nichols, William
Nute, Andrew T.
Orne, Benjamin S.
Osgood, Charles

Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Peabody, Nathaniel
Penniman, John
Perkins, Jesse
Perkins, Noah C.
Phinney, Silvanus B.
Pierce, Henry
Putnam, John A.
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, William
Stiles, Gideon
Taber, Isaac C.
Taft, Arnold
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tyler, William
Underwood, Orison
Viles, Joel
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Ward, Andrew H.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Josiah G.
Allen, Parsons
Andrews, Robert
Appleton, William
Atwood, David C.
Ballard, Alvah
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bates, Moses, Jr.
Beebe, James M.
Bell, Luther V.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, Willam C.
Brewster, Osmyn
Brinley, Francis
Briggs, George N.
Bumpus, Cephas C.
Cady, Henry
Carter, Timothy W.
Churchill, J. McKean
Cleverly, William
Coggin, Jacob
Conkey, Ithamar
Crockett, George W.
Crosby, Leander
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Davis, Charles G.
Dawes, Henry L.
Day, Gilman
Dehon, William
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Easton, James, 2d
Ely, Joseph M.
Eustis, William T.
Fitch, Ezekiel W.
Foster, Aaron
Foster, Abram
Frothingham, Rich'd, Jr.
Gale, Luther
Giles, Joel
Goulding, Jason
Greenleaf, Simon
Hale, Nathan
Hall, Charles B.
Hapgood, Lyman W.
Haskins, William
Henry, Samuel
Hinsdale, William
Hobart, Aaron
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hyde, Benjamin D.
James, William
Kellogg, Martin R.
Kinsman, Henry W.
Knowlton, Charles L.
Ladd, John S.
Lawton, Job G., Jr.
Lincoln, Frederic W., Jr.
Loomis, E. Justin
Marcy, Laban
Marvin, Theophilus R.
Meader, Reuben
Mixter, Samuel
Newman, Charles
Norton, Alfred
Ober, Joseph E.
Orcutt, Nathan
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Pease, Jeremiah, Jr.
Phelps, Charles
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Schouler, William
Sheldon, Luther
Sherman, Charles
Sikes, Chester
Sleeper, John S.
Stevens, Joseph L., Jr.
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Charles
Sumner, Increase
Swain, Alanson
Taylor, Ralph
Thayer, Joseph
Tileston, Edmund P.
Tilton, Horatio W.
Tower, Ephraim
Train, Charles R.
Turner, David
Turner, David P.
Upham, Charles W.
Wales, Bradford L.
Walker, Samuel
Warner, Marshal
Warner, Samuel, Jr.
Waters, Asa H.
Weeks, Cyrus
Wetmore, Thomas
Wilkins, John H.
Winn, Jonathan B.
Wood, William H.
Woods, Josiah B.

Absent and not voting, 123.

Mr. GARDNER. I wish that this matter might, if possible, be sent out to the people without any contradiction of principle upon its face. The first article of this third chapter, is as follows :

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

In order to make this article consistent with the one following it, I wish to amend it thus : strike out the word "people," in the second line, and insert the words "several towns ;" and also strike out the last word in the article, "equality," and insert the words "prerogative rights." It will then read :—

ARTICLE 1. There shall be, in the Legislature of this Commonwealth, a representation of the several towns, annually elected, and founded upon the principle of prerogative rights.

The PRESIDENT. The Chair is of opinion that the amendment is not in order, being one of substance, and not of form.

No other amendment being offered, the third chapter, as amended, was finally passed, and the Secretary proceeded to read chapter four, containing provisions in relation to the governor and his title —his qualifications and tenure of office—the mode of his election, and by whom—his powers, and the powers of the council—notaries public—coroners

—mode of drawing money from the treasury—the duties of public boards in regard to their returns—and, lastly—the salary of the governor, the whole chapter containing twelve articles. It is as follows:—

ARTICLE 1. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS.

ART. 2. The governor shall be *a citizen of Massachusetts*, and shall be chosen annually, *by the inhabitants of the towns and cities of this Commonwealth, on the Tuesday next after the first Monday in November*. He shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead. *And no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.*

ART. 3. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, *on the Tuesday next after the first Monday in November*, annually, give in their votes for a governor, to the selectmen, who shall preside at such meeting, and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the first Wednesday in January; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said first Wednesday in January; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at least before the said day; and the secretary shall lay the same before the Senate and the House of Representatives, on the first Wednesday in January, to be by them examined; and in case of an election, the choice shall be by them declared and published.

ART. 4. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this Commonwealth for the time being; and the governor, with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land.

ART. 5. The governor, with advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire; and in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said Court is next, at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the State.

ART. 6. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

ART. 7. The power of pardoning offences, except such as persons may be convicted of before the Senate, by an impeachment of the House, shall be in the governor, by and with the advice of Council; but no charter of pardon, granted by the governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

ART. 8. Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the Council, upon the address of both Houses of the General Court.

ART. 9. Coroners shall be nominated and appointed by the governor, by and with the advice and consent of the Council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

ART. 10. No moneys shall be issued out of the treasury of this Commonwealth and disposed of, (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon,) but by warrant under the hand of the governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

ART. 11. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care, respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

ART. 12. As the public good requires that the governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

Mr. HATHAWAY, of Freetown. As there was a question raised, and some difficulty felt upon the subject, in regard to the qualifications of members of the House of Representatives, as they existed under the amended Constitution of 1820, I wish to call the attention of the Convention to another matter about which there seems to me to be no question—that is, the qualifications of a governor. If I read the Constitution correctly as it now stands, it requires that no person shall be eligible to the office of governor, unless, at the time of his election, he has been an inhabitant of the Commonwealth for seven years next preceding such election. Here is the provision as it stands in our present Constitution:—

"The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding."

I would inquire whether there has been any action of the Convention by which that provision of our present Constitution was amended? And if there was no such action why is it omitted here? If I recollect rightly—and I think I am right, although I have not now the record of debates before me—when this question was asked on a former occasion, it was stated that the Committee had only reported in part. The gentleman from Worcester, (Mr. Davis,) and also my friend from Wareham, (Mr. Miller,) were on that Committee, and when I inquired in regard to this matter, it was said that everything—except those matters in which the Committee recommended a change—would be retained, and ought to be retained in the Constitution. That was my answer. Now, if there was any action of the Convention in regard to this matter changing the requirement of a seven years' residence in the election of governor, I should like to be informed what that action was, and when and under what circumstances it was had. I make no motion for any amendment, but I should certainly like to have this explained.

Mr. BOUTWELL, for Berlin. I am not able to answer the gentleman from Freetown, but I think we have a resolution that will meet the case.

Mr. MILLER, of Wareham. I recollect very well when the Report first came up, the gentleman from Freetown, (Mr. Hathaway,) inquired at the time in reference to this qualification of a seven years' residence for a governor; and that I then rose in my place and stated that we intended that provision to remain in the Constitution. I have no recollection of any action of this Convention altering the determination of the Committee to whom this portion of the Constitution was referred.

Mr. HATHAWAY. If the gentleman will pardon me, I will make an inquiry. I wish to know whether the Committee of which the gentleman was one, and who had this under consideration at the time, reported any action for this Convention to take in reference to the seven years' residence.

Mr. MILLER. The Committee did not report any action on that point, but they supposed—as it is stated in the present Constitution, that the governor shall, at the time of his election, have been an inhabitant of the Commonwealth for seven years next preceding—that this provision would remain in the Constitution. That was regarded as decided upon. In the new Constitution, there is a requirement of a five years' residence in the Commonwealth to enable a person to be qualified to be a senator; and, it appears to me, that if you require a residence of five years for a senator, you should, at least, require five, if not seven years' residence in order to make a person eligible for the higher office of governor. The term "citizen of Massachusetts," I remember, was discussed very much in the Convention at the time; but I know of no action, either in Convention or in Committee, that has altered, or that was intended to alter, the present requisition of seven years in order to make a person eligible to the gubernatorial chair.

Mr. BOUTWELL. My own impression is that the Committee have made an omission, although I am not able at this moment to verify that statement. If the Convention will go on with the amendments, the Committee will ascertain, and have the matter placed right.

Mr. DAVIS, of Worcester. I will remark, that in document No. 8, the Convention will find the Report of the Committee, and will perceive what alterations the Committee recommended to the Convention. It is precisely as the gentleman from Wareham has stated; they reported to the Convention that no person except a citizen of the United States should be eligible to the office of governor; but the Convention afterwards changed it to "citizen of Massachusetts."

Mr. DANA, for Manchester. I have examined the record, and I find that the resolves in document No. 8 were amended only in two particulars—in the first resolve by striking out the words "United States," and inserting "Massachusetts," and by striking out of the last line the words: "nor shall any person be eligible to that office who shall not have attained to the age of thirty years." There was no other amendment at all, and it must have been an omission by the Committee.

Mr. HOOPER, of Fall River. It was distinctly stated in the discussion, by the gentleman from Freetown, that the other qualification would remain.

Mr. BOUTWELL. I have no doubt, upon examination of the record, that the Committee were in error. I therefore move to insert, at the close of the article, the following:—

And no person shall be eligible to this office unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.

The question being taken, the amendment was agreed to.

The PRESIDENT stated that unless further amendment was proposed to the fourth chapter, the Secretary would read the fifth chapter.

The fifth chapter was accordingly read, as follows:—

ARTICLE 1. There shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

[And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.]

ART. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

ART. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor, for the time being, shall have and exercise all the powers and authorities, and perform all the duties of governor; *and* whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor *shall be governor of the Commonwealth.*

No amendment being proposed to the fifth chapter, the Secretary read the sixth chapter, as follows:—

ARTICLE 1. There shall be a Council for advising the governor in the executive part of the government, to consist of *eight* persons besides the lieutenant-governor, whom the governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

[ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.]

ART. 3. No person shall be elected a councillor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election.

[ART. 4. The day and manner of the election of councillors, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be declared to be elected.

ART. 5. No councillor, during the time for which he is elected, shall be appointed on any commission or to any place and receive compensation therefor.]

ART. 6. The councillors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant-governor.

ART. 7. The resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and any member of the Council may insert his opinion contrary to the resolution of the majority. This record *shall always be subject to public examination*, and may be called for by either House of the Legislature.

ART. 8. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute all and every such acts, matters and things, as the governor or the lieutenant-gov-

ernor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

Mr. WILSON, of Natick. It seems to me that there is an omission in the second article. It provides that eight councillors shall be annually chosen by the people, and for that purpose the State shall be divided by the general court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, &c. It seems to me that there should be a provision in addition, and I will move to add, after the word "court," the following words: "holden next after the adoption of this Constitution, and next after each decennial census thereafter," so that it will read:—

ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court holden next after the adoption of this Constitution, and next after each decennial census thereafter, into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.

By the adoption of this amendment it will be in the power of the legislature to change the councillor districts whenever they see fit.

The PRESIDENT. The amendment is not in order. It is an amendment of substance and not of form.

Mr. HALE, of Boston. I will ask if, in the engrossed form, the orthography of this edition will be followed? If so, I move to amend it so that the word "councillor," wherever it occurs, shall be spelled as in the original Constitution. It is here spelled with a *c* instead of an *s*.

Mr. HALLETT, for Wilbraham. As one of the Committee, I will say that this was a subject of very grave consideration before the Committee. If the gentleman will consult the original orthography, I think he will find that the word is spelled with a *c*. It appears to be the proper word, too; they are not counsellors at law or barristers—they are simply councillors, who surround the governor.

Mr. HALE. Undoubtedly it is in the power of the Convention to coin a word; but the word counsellor, in the English language, is always spelled with an "s." I therefore move that "councillor" be stricken out, and "counsellor" inserted in its stead.

Mr. OLIVER, of Lawrence. It strikes me that it would not be correct to have it spelled in that way. These gentlemen are members of the Council, and they sit in council together. They are not members of a counsel, and therefore they are not counsellors. I think there is excellent authority to sustain this mode of spelling the word; and if I am not greatly mistaken, it was so spelled in the original draft of the Constitution of this Commonwealth. That is the way that the Privy Council of England is spelled, almost universally.

Mr. JENKS, of Boston. I have always looked upon this orthography of the word "councillor," as a matter of affectation, and I do not think it is worth while for us to continue to use this new fangled word which has been manufactured within a few years. I think "counsellor" is the proper word, and in my opinion that is the way in which it was originally spelled. I am in favor of the amendment, for I think it is a mere matter of affectation to spell it "councillor."

Mr. BIRD, of Walpole. This is not, perhaps, a very vital matter, but I am of opinion, that as long as we have taken it up, it may be as well to have it settled correctly, and I believe that "counsellor" is the real way in which this word should be spelled. If you say that it should be spelled "councillor" as derived from "council," I will admit, that a word may be coined, and of course, when a new word is coined, there is no particular rule by which it can be decided that one mode of spelling is right and another is wrong. I hold, that "counsellor" is derived from "counsel," which means to give advice; and as these men are appointed for the purpose of giving advice to the governor, they should be termed counsellors. It is not a very important matter, and it may have been rather an inadvertance of the printers or the copyist, than an intentional mode of spelling the word.

Mr. HALLETT, for Wilbraham. Not at all. This subject was considered by the Committee, and the question was decided by them; so they are responsible for the orthography. I will add that in the original charter, it is spelled "councilor" in some places, and in others it is spelled "councillor." These men are not counsellors—they are not kings' attorneys, but they are councillors as distinctive from the legal profession.

The question being taken, the amendment was not agreed to.

No further amendment being proposed to the sixth chapter, the Secretary read the seventh chapter, as follows:—

[ARTICLE 1. The secretary, treasurer, auditor and attorney-general, shall be chosen by the people, annually on the Tuesday next after the first Monday in November; and they shall hold their offices, respectively, for one year next following the first Wednesday in the succeeding January,

and until their successors are chosen and qualified in their stead.

The day and manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of governor.]

ART. 2. No man shall be eligible as treasurer, more than five years successively.

ART. 3. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and Council, the Senate and House of Representatives, in person, or by his deputies, as they shall respectively require.

[ART. 4. Judges of probate, registers of probate, sheriffs, clerks of the courts, commissioners of insolvency, district-attorneys, registers of deeds, county treasurers, and county commissioners, shall be elected triennially by the people of their respective counties and districts, on the Tuesday next after the first Monday in November, and shall hold their offices, respectively, for three years next following the first Wednesday in the succeeding January, and until their respective successors are chosen and qualified in their stead.

The manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be elected.]

Mr. DENTON, of Chelsea, moved, that after the words "county commissioners," in the fourth line of article four, the words "except for the county of Suffolk" be inserted.

Mr. HALLETT. Upon an examination of that subject, I have no question that there is no change at all affected by this Constitution. The city treasurer of Boston is chosen under the existing law. This only requires that when there shall be a county treasurer, he shall be chosen as provided for in the Constitution.

Mr. DENTON. I speak of county commissioners. A portion of Suffolk County has been set off from the county of Middlesex, and as I understand, the chairman of the Committee which reported these resolves was unaware that there had been a division. The mayor and aldermen are county commissioners of the city of Boston, which is a portion of the county of Suffolk. The three remaining towns are attached to the county of Middlesex. I understand that the chairman of the Committee thinks there is a doubt, if action is taken upon the resolution as presented to the Convention, whether it would not put Chelsea and North Chelsea precisely where they were before, separate from the county of Middlesex.

The PRESIDENT. The Chair thinks the amendment one of substance and not one of form.

Mr. BUTLER, of Lowell. Lest there should be trouble so far as that matter is concerned, I call the attention of the Convention to the language of the article. It says that "county treasurers and county commissioners shall be elected triennially by the people of their respective counties and districts," &c. Now the legislature have set off Chelsea and North Chelsea each to Middlesex, and they, with the county of Middlesex, make a district for the purpose of choosing commissioners. So that I do not see the trouble which is suggested by the gentleman from Chelsea, that it can only be the people of a county who elect a commissioner. The language is, "chosen in their respective *districts*."

Mr. LORD, of Salem. I had the idea when the matter was under consideration, that the county of Suffolk was excepted; and, if in reality the county of Suffolk was excepted, they ought to be excepted in this provision. I do not know that I am right, but I think that county commissioners, so far as Boston was concerned, were excepted upon the motion of the gentleman who represents Wilbraham, (Mr. Hallett). Now, it seems to me that if they were, they ought to be here, because I do not agree at all to the construction which is now given to this clause by the gentleman for Wilbraham, that until the office of county commissioner shall be created for the county of Suffolk, it does not devolve upon the people to choose one. I think if the duties of that office are performed by another tribunal, that tribunal must be elected precisely in the same manner as is provided for the election of county commissioners, otherwise it will be competent for the legislature to alter the Constitution, simply by changing the name of the officer, and putting upon him the duties imposed upon the county commissioners. Suppose that instead of there being county commissioners, the legislature should create a body of county selectmen, and place upon them the precise duties which now belong to county commissioners. Now, having imposed the duties of county commissioners upon the selectmen of the county, those duties being the same as those of county commissioners, it seems to me that the Constitution would require that they shall be elected in the mode pointed out in the Constitution for the election of county commissioners, and that their appointment could not be given to the governor, because, if otherwise, every officer that you have made elective by the people can be appointed by the governor, simply by the legislature changing the name of the officer, and imposing upon him the same duties as the other officer. If the construction which I give to it is the true one, then the mayor and aldermen of the city of Boston must be elected

for the term of three years, unless an exception is made in their favor, which was made in the Committee of the Whole, when the subject was under consideration. I think the exception was made there, though I have no distinct recollection about it. I wish to stand upon the action of the Convention, whatever it is.

Mr. BOUTWELL, for Berlin. I have a certified copy of the proceedings of the Convention, but the exception was not made.

Mr. LORD. I knew the action of the Convention was reversed as to county treasurer, but as to county commissioners I did not know.

Mr. BOUTWELL. As some gentlemen desire that the title of this seventh chapter should be made more explicit, I move to amend it, so that it shall read: "Secretary, Treasurer, Attorney-General, Auditor, District-Attorneys, and County Officers."

The question was taken, and the motion was agreed to.

The Secretary then proceeded to read the next chapter, being chapter eight, entitled "Judiciary Power," which is as follows:—

[ARTICLE 1. The judicial power of the Commonwealth shall be vested in a Supreme Judicial Court, and such other courts as the legislature may from time to time establish.]

ART. 2. 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 *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. *And upon the expiration of such term they may be reappointed;* and all judicial officers *for whose appointment a different provision is not made in this Constitution, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council, and they* may be removed by the Governor, with consent of the Council, upon the address of both Houses of the Legislature.

[ART. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten yaars, shall be publicly announced at least seven days before their appointment; and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

ART. 4. Neither the Governor and Council, nor the two branches of the Legislature, or either of them, shall hereafter propose questions to justices of the Supreme Judicial Court, and require their opinions thereon.]

ART. 5. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the Legislature shall from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

[ART. 6. Justices of the peace, justices of the peace and quorum, justices of the peace throughout the Commonwealth, and commissioners to qualify civil officers, may be appointed by the governor and Council for a term of seven years; and upon the expiration of any commission, the same may be renewed; and those now in office shall continue therein according to the tenure of their respective commissions: *provided*, that the jurisdiction of the justices named in this article, shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

ART. 7. Trial justices shall be elected by the legal voters of the several towns and cities, where, at the time of such election there is no Police Court established by law, who shall hold their offices for a term of three years, and have the same jurisdiction, powers, and duties, as are now exercised by justices of the peace, or such as may hereafter be established by law. Every city or town, authorized as herein provided, shall elect a trial justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census: *provided, however*, that any trial justice who shall remove from the city or town in which he was elected shall thereby vacate his office.

ART. 8. Justices and clerks of the Police Courts of the several cities and towns of the Commonwealth shall be elected by the legal voters thereof, respectively, for a term of three years.]

Mr. CHOATE, of Boston. I beg to offer an amendment, which I have drawn with some little care, and extended, therefore, into several parts, though constituting an entire amendment altogether, for the purpose merely of transferring the change proposed to be made by the Convention in the matter of judicial tenure of office, from the body of the Constitution, where it must be voted for along with everything else, for the purpose, I say, of transferring that subject, into that part of the amendments proposed to be submitted separately to the people, so that it may be separately acted upon by the people, and by the individual voter.

As I understood the learned chairman, (Mr. Boutwell,) this morning, to suggest, that he should himself favor the separate submission of everything to the individual voter—which, it can be shown, may be practicably and properly done

—I anticipate his support. I have paid some little attention to the details of this motion, and I count upon his coöperation. I propose, then, without sending the amendments to the Chair at present, to strike out, as follows: In the first place, strike out article thirty of the Bill of Rights, which is this:—

ART. 30. 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 *by tenures established by the Constitution, and* should have honorable salaries, *which shall not be diminished during their continuance in office.*

Then strike out of article two, in this chapter eight, the following:—

All judicial officers, duly appointed, commissioned and sworn, shall hold their offices *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of such term they may be reappointed.

Strike out all of article three, as follows:—

ART. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment: and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

The effect will be to remove from this portion of the Constitution which the Committee have numbered "one," everything which applies to a change in the judicial tenure, and nothing else. It will take that bodily from the position in which it now stands.

I then respectfully propose that you shall insert, on page forty of this printed Report of the Committee, under heads "nine," "ten," "eleven," and "twelve," the following, constituting one distinct provision and proposition, and those will be exactly what will have been removed, by the first branch of my proposed amendment, from number "one," that is to say, having struck out what I have indicated, then insert, as the ninth, tenth, eleventh, and twelfth paragraphs, what I will have the honor to read. They are nothing, but in their very terms, the provisions which the proposition to strike out, will have struck out. Supposing, then, that part of the amendment to have been adopted, and that nothing remains in number "one," upon the subject of the judicial tenure, then the following propositions will cover that ground exactly in the language of the Committee, and embrace what the Convention has done.

*Ninth.* All judicial officers, duly appointed, commissioned and sworn, shall hold their offices *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. And upon the expiration of any such term, they may be reappointed.

If this proposition be ratified and adopted, it shall be in addition to the chapter on the judiciary power.

*Tenth.* The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment: and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

If this proposition be ratified and adopted, it shall be in addition to the chapter on the judiciary power.

*Eleventh.* 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 *by tenures established by the Constitution, and* should have honorable salaries, *which shall not be diminished during their continuance in office.*

If this proposition is ratified and adopted, it shall be in addition to the Declaration of Rights.

*Twelfth.* That all tenure of judicial office which shall not be changed by the Constitution, shall remain as heretofore.

This last proposition is indispensable, to meet

a difficulty suggested by my friend for Manchester, (Mr. Dana,) in consultation with him, for it may happen that number "one" of the proposed amendments, may be adopted. If number "one" should be rejected, and this particular amendment should be rejected also, there might be a Constitution left without any tenure of office.

It is a part of this scheme of amendments, Mr. President, that the provisions respecting the limitation of judicial tenure, as proposed to be numbered progressively, nine, ten, eleven, and twelve, are to be considered as distinct propositions, to be adopted in the whole or rejected in the whole, as the people think proper. Now, having indicated what will unquestionably be the judicial effect of this amendment, I do not intend to detain the Convention with but a word in its favor. It simply, fairly, and in good faith, without modifying in the least degree the substantial action of this Convention, enables every voter in Massachusetts to express his own opinion, directly, upon so substantial, so distinct and important a proposition as to change the judicial tenure, uncoerced by its connection with any other subject—to the intent that every voter shall exercise his own reason and free will upon a subject distinct from every other branch of the entire subject committed to him—a proposition so reasonable, that, unless it is attended with the technical difficulty indicated this morning, by the honorable chairman of the Committee, would meet with universal approbation. It should be borne in mind—and it strikes me that it is a principle which should govern us—that we had to perform a distinct branch of duty. We were to express, and procure to be adopted—if we could—by this Convention, our own opinions concerning amendments to the Constitution. That duty we have been engaged in arduously for ninety days, and we have done it. We have conferred upon it, we have voted upon it, we have accomplished it, and we have completely and in good faith, finished that branch of our duties, the expression of our own opinions touching amendments to the Constitution. The other piece of work submitted to us, and to which we have now arrived, is exactly to enable the people to do their part of the great concurrent work, in amending the Constitution, in the best practicable manner, on their part. And I apprehend that nobody can feel any desire whatever, to give it such a direction before the people, as shall lay them under coercion to adopt our views whether they like them or not. We should all feel, and should all coöperate to bring the matter before them in such a shape that they will express their own views exactly, without coercion, from any of its connections.

I hope, therefore, that unless my friend for Manchester, (Mr. Dana,) who has, I believe, been engaged more particularly with the consideration of the details of this part of the general subject, and with the composition of the amendments which are to be presented, should indicate some greater difficulties than I yet imagine exist, this particular amendment may be separately considered. The present is not the time to say a single word on the merits of the question, nor is it necessary. In regard to that, the Convention has already formed its opinion; but, I would suggest that this change in the nature of the judicial tenure, is a matter wholly new to everybody in the Commonwealth—that it is an innovation on our ancient usages that was not extensively canvassed before the Convention met—that it is a matter of vast importance to the whole community—and that it is easily separated from the rest of the Constitution.

Mr. HALLETT, for Wilbraham. I rise for the purpose of suggesting to the gentleman from Boston, the inquiry whether the thirtieth article of the Bill of Rights may not be left standing as it is; because, as it is there, it is entirely in the alternative, and is to be adapted either to the old or the new Constitution.

Mr. CHOATE. Suppose, for instance, that the whole of this resolve, which you call number one—embracing the great bulk of the Constitution—should be rejected by the people, then there is no such article there. No such article remains, and the old article in the old Constitution, commissioning the judges for good behavior, and this amendment would also remain, commissioning them under a ten years' tenure.

Mr. HALLETT. Then you might reject the whole of the first, and part of the last. I say to the gentleman from Boston, that I will go with him upon this point, if it is possible to make this provision a separate question, so that the remainder of the Constitution remains entire. I am not able to say whether the Constitution will bear that separation; but, as I have said before, if it can be submitted to the people without marring the symmetry of the instrument as a whole, whether it is adopted or rejected, I will go with the gentleman for his proposition.

Mr. DANA, for Manchester. Having been somewhat appealed to by the learned attorney-general, I feel bound to speak to the subject matter which he has brought before the Convention. It is certainly true, that the amendment we have adopted altering the tenure of the office of supreme judges from a life tenure to a tenure of only ten

years duration, is a material change in the Constitution. I trust that some of the members of this body will remember that I was not in favor of this change, and if it were to go as a separate proposition before the people, I should vote against it. As one of the Committee of Revision, I was in the hope that we should be able to put all these propositions separately to the people. But, after a more careful examination of the matter, I came to the conclusion that we could not put any of them as separate propositions, except such as were entirely new and independent. The gentleman for Wilbraham thought we could; but he afterwards changed his opinion. I I gave early notice of this effect. During the debate on the subject of the judiciary, I said to the Convention that if these changes in the judicial tenure were made, they would have to be submitted to the people with all the rest of the propositions, as a unit. I gave that as a reason against adopting a change on which no public opinion had been expressed. I have not been able since then, to change my opinion. The learned attorney-general has brought before us a proposition that will do it, if anything human can. I have tried, myself, to invent or discover a mode by which it could be done; and doubtless the learned attorney-general has gone far beyond me in his plan; but I confess that I do not see the way clear yet. He proposes to divide all that relates to the judicial tenure embraced in the chapter on the judiciary, from the rest of the Constitution, and to present it as a separate resolution, to be called number nine. This embraces four distinct sections or articles. The first, relates to the ten years' tenure; the second, to the tenure of the present judges; the third, is the thirtieth article of the Bill of Rights; and the last, is a new proposition, which I suppose the Chair will be obliged to rule out of order, at this time.

Now, the principle upon which we have gone, and which the chairman of the Committee has so clearly illustrated, is this: that the Constitution of 1780 has thirteen amendments, many of them amendments upon amendments, rendering the construction of the Constitution extremely difficult. We wish to have a symmetrical instrument, so that every officer in the Commonwealth may find everything he wants to find, under its proper caption, without being obliged to hunt over the Constitution of 1780, and all the amendments from that day to this, to find what he ought to be able to find in a moment. We wish to secure this result. For this purpose, the new Constitution must go entire to the people.

It was truly said by the chairman of the Committee, that number "one" must contain all that is necessary for the working of the government. Now, the learned attorney-general will admit that the judicial tenure is one of the essential provisions of every Constitution. Yet he proposes to strike out from proposition number one, all the provisions relating to the judicial tenure, so that if number one alone is accepted, and nine, ten, eleven, and twelve are rejected, we shall have a Constitution without any provision for a judicial tenure. With a Constitution so defective, it might be left to the legislature, to regulate the judicial tenure; but, would he be willing to leave to the legislature the power to regulate the tenure of the judges? I think not. If we did not do that, then we must go back to the Constitution of 1780 for our judicial tenure, reviving it, by construction. Which of these courses would be followed, I cannot guess; but put it at the best, and suppose the old Constitution to revive. The result would be, that all the old Constitution would be revived, for there is no power short of the people which can say to what portion of the Constitution of 1780 we shall go to find which relates to the judicial tenure. The whole Constitution would therefore be printed and kept alive. Now, I submit to the gentleman whether it would be worth while to send out a Constitution without a provision for a judicial tenure, and then to say to the people, when they want to know the tenure of the judges, "Look to the Constitution of 1780, and if that is not the proper place to look for it, then leave the matter to the legislature?" I cannot think that this will be done. If the people accept that part of the Constitution which we call number one, and reject nine, ten, eleven, and twelve, then we have no provision in regard to a judicial tenure. The question then would be, whether that tenure should be left to the legislature, or whether we are to grope for it in the Constitution of 1780, with its amendments. In that Constitution, the judicial tenure is mentioned in two or three places; and the difficulty would be that that Constitution would necessarily, so far, be in existence, if that supposition be a correct one. If it is not, then it would necessarily be left to the legislature, and that objection, to my mind, would be fatal.

But there are other objections. Suppose that the Constitution of 1853—which for convenience we call number one—should be rejected, and the twelve resolutions should be accepted; what kind of a Constitution would you have? It would declare in the most solemn manner, the life tenure of the judges to be essential to their impartiality, and then, in the thirty-second article it would present the contradictory provision that

they should only hold them for ten years. That would be an inconsistency, from which I should think the good taste of the gentleman would lead him to shrink.

Moreover, if the first proposition is rejected, and this proposition is accepted, then the ninth proposition would be inconsistent with the Bill of Rights; the one saying that the office should be held for life, and the other for ten years. The tenth proposition would say that the present judges should hold their offices according to their commissions. That would be right, undoubtedly. I think there is no objection to that. The eleventh article would insert a provision which would be inconsistent with the Bill of Rights, as I have mentioned. If I could see my way clear, in the amendment of the gentleman from Boston, I would certainly go for it; but at present, I must confess that everything in regard to it presents nothing but darkness and difficulty to my mind. And if we, who have studied the subject, find it complicated and difficult of adjustment, how will it strike the voters at the polls?

Mr. LORD, of Salem. I believe that the difficulty of the delegate who represents Manchester, arises from not considering that it is necessary to do something to make an amendment to the third and fourth resolutions, which will become necessary in consequence of the adoption of these articles as put separately; and if he will consider for one moment, he will see that there is no difficulty whatever in the proposition which the very distinguished gentleman from Boston submits. In the first place, he will perceive that when the people vote, they will either accept both, reject both, or accept one and reject the other, or reject one and accept the other. There are, then, four different ways in which the people can act upon them.

Mr. DANA, (in his seat). The people may accept part, and reject part.

Mr. LORD. No, Sir; the four go together, as one proposition, being all one system. If, therefore, it can be made clear that whatever action the people may take, it will leave a perfectly sound Constitution throughout, with a sound judiciary system, then the gentleman for Manchester will find his whole end answered. I submit, Sir, that it will be proper to add this provision to the resolution: If number one is adopted and ratified by the people, and nine, ten, eleven, and twelve are rejected, then number twenty-nine in the Bill of Rights of the present Constitution shall be considered as number thirty in the Bill of Rights of the new Constitution. With this suggestion, let us see how it will operate in either alternative: If the people accept both propositions, then the gentleman for Manchester himself will be satisfied that it will be a perfect system. If the people reject them both, there will be no difficulty; because, having rejected them both, the old Constitution will stand just as it does now. We see, then, that if either both are accepted or both rejected, there is no trouble. Now, suppose they accept number one as the new Constitution, and reject these four propositions, nine, ten, eleven and twelve; what will be the state of things then? You will have your judiciary power. You will have article one, which says that "the judicial power of the Commonwealth shall be vested in a supreme judicial court, and such other courts as the legislature may from time to time establish." You will have article two, which says that "the tenure that all commission officers shall by law have in their offices, shall be expressed in their respective commissions." Then what else will you have? You will have the old twenty-ninth article of the Bill of Rights restored as the thirtieth article of the Bill of Rights of this Constitution, declaring a judicial tenure for life, or during good behavior. You will therefore have a perfect Constitution, harmonious and consistent, if the people accept this, and reject the other. But suppose they reject number one, and accept the other, what will you have in that case? Then, of course, having rejected the new Constitution, the old Constitution stands as the Constitution of the Commonwealth; but, having accepted an amendment which is, to some extent, inconsistent with that, as every amendment is supposed to be, that amendment stands just exactly as other amendments stand, which have changed the old Constitution in some particular respects. To my mind it is perfectly clear, that if you adopt this provision and put into the resolve the words which I have now suggested, the Constitution will be a perfect system, no matter what action the people may take with regard to the adoption or rejection of these amendments. I submit to the discriminating mind of the gentleman who represents Manchester, that there can be no difficulty whatever.

Mr. BOUTWELL, for Berlin. This proposition is so very complicated, that gentlemen for a considerable time may disagree as to what its effect is; and what I have to say is rather in the way of suggestion. If the proposition of the gentleman from Boston shall be entertained by the Convention, and his numbers nine, ten, eleven and twelve, shall be submitted to the people, we also submit number one, which stands in place of the old Constitution. If, then, numbers nine, ten, eleven and twelve, are rejected, the

result is, that your thirtieth article of the Bill of Rights is gone altogether. But suppose we submit number one to the people, without the second clause of article second, article third of the chapter on the judiciary power in the present Constitution passes away; and if the proposition of the gentleman from Boston is rejected, that passes away, and then what will you have? You declare in the Constitution that the judicial power of the Commonwealth shall be vested in a supreme judicial court, and such other courts as the legislature may from time to time establish; but you have no provision how your judges shall be appointed, so far as I can see at this moment. Are they to be elected by the people in that case? I presume that would be a question for the legislature to determine; and thus, instead of settling the mode of election by the people in the Constitution, you leave it for legislative action. And you have stricken out the provision in the third article of the proposed Constitution, which declares that the judges may be removed by the governor, with the consent of the council, upon the address of both branches of the legislature; so that according to this, whether the proposition of the gentleman from Boston be adopted or rejected by the people, as the former Constitution will have passed away, you will have a Constitution without any power whatever to remove a judge by the address of both branches of the legislature. I make these remarks by way of suggestion, in order to show the complicated nature of the proposition of the gentleman from Boston. I cannot tell how I should regard it if we had time to give it a deliberate examination; but it seems to me so complicated that it cannot probably be fully comprehended by this Convention to-day.

Mr. SCHOULER, of Boston. I would like to ask the gentleman for Berlin a question. If we strike out all with regard to the judiciary, according to the proposition of the gentleman from Boston, (Mr. Choate,) and if the people should adopt the Constitution in this form, and at the same time reject the propositions of my distinguished colleague, I want to know whether that part of the old Constitution which relates to the judiciary, would not stand as a part of the new Constitution?

Mr. BOUTWELL. That would not stand unless this Convention should make that exception in proposition number one, because it is expressly declared that proposition number one shall take the place of the existing Constitution of the Commonwealth. But if the idea that exists in the mind of the gentleman from Boston, should be the idea of this Convention, then what have you? You have now a Constitution without proper provisions for the existence and working of the judiciary power, and in order to remedy that evil, what do you do? You bring back into life again the Constitution of 1780 and all its amendments; and what the judiciary power is, as provided in that Constitution, no man can tell, unless he has the whole instrument with all the amendments and provisions before him. For my part, I cannot see how this proposition can be submitted in the manner proposed by my friend from Boston, without working infinite evil in some one of these ways which I have suggested, if not in other ways which may be seen when it shall be more fully examined.

Mr. WHITNEY, of Boylston. The system of the gentleman from Boston may be very beautiful —I have no doubt it is—but it is too complicated for this time. We have no opportunity to examine it and to understand it; and I hope, therefore, that his amendment will not be adopted.

Mr. CHOATE, of Boston. A single word, Mr. President. This is to some extent an expression of opinion against opinion; and when I shall have repeated the expression of my own, in entire concurrence with that of my friend from Salem, availing myself of his very clear and lucid exposition of the matter, I shall have said all that I have to say on the present occasion. As I understand the chairman of the Committee and my friend for Manchester, there is but one single contingency in which any difficulty can be apprehended. Let us see what that difficulty is, and in one single word, what the answer to it is. The difficulty which is expected, is, that resolution number one may be adopted by the people, and these amendments may be rejected; and thereupon they suppose that the people will have repealed and abrogated the old Constitution, and will have made a new Constitution, in which they will have made no provision at all for the tenure of judicial offices. Let me repeat it, in order that we may see whether the answer to this difficulty is not entirely satisfactory. By the adoption of resolution number one, the old Constitution will have ceased to be, because the proposition numbered one becomes *the* Constitution of the Commonwealth, and displaces the other, of course. The amendments which I now offer as numbers nine, ten and eleven, however, being rejected, and the Convention having first stricken from number one those three provisions which prescribe the judicial tenure of ten years, the difficulty which they fear is, that they shall be left with judicial offices having no tenure whatever prescribed. Now, I respectfully submit, that there are three several answers to this

difficulty, to which I imagine that every legal mind and sober understanding will entirely assent. In the first place, we are to suppose that the people will do nothing at all capricious in regard to what we are about to submit to them; and therefore I reason upon the supposition that article number twelve will also be adopted and become a part of the new Constitution. That article provides that all tenures of judicial offices which are not changed by the Constitution, shall remain as heretofore. Very well; then you have got a new Constitution as contained in proposition number one; but you have made no change in the tenure of judicial offices, because that part of number one which undertook to make a change, has been stricken out of number one and placed in the appendix. You will have a new Constitution, abolishing the old one, it is true; but the new Constitution makes no change in the tenure of judicial offices, and therefore by the force of my own amendment, all these tenures being unchanged, remain as heretofore. In order, then, to know what is the existing tenure of judicial offices, it will not be necessary to go back to trace the history of the past two hundred years, for the provisions of the present Constitution on that subject are well understood, and no change will take place.

Mr. BOUTWELL, for Berlin. It may be that I do not understand the proposition of the gentleman; but my point is this: If proposition number one is accepted, it becomes the Constitution of the State; but if the propositions of the gentleman from Boston are rejected, that one which provides for a judicial tenure is rejected with the rest.

Mr. CHOATE. In the first place, I do not apprehend anything like capricious action upon the part of the people of this Commonwealth. I presume them to be, in the main, intelligent, and I presume them to act thus. If they make a new Constitution which establishes no change whatever in the judicial tenure, and which intentionally omits to change the judicial tenure, and if, at the same time, they reject the separate proposition which does make that change, they will of course desire that the tenure shall remain as it is, and will adopt my amendment, numbered twelve.

The second answer I submit on the suggestion which I adopt very cheerfully from my friend from Salem, (Mr. Lord); and that is, that in a certain contingency, which is contemplated by the honorable chairman of the Committee, article number twenty-nine, in the present Bill of Rights shall be revived and considered as article thirty in the Bill of Rights of the new Constitution. Then you will have not only your new Constitution, as contained in proposition number one, making in itself no change in the judicial tenure, but you will also have the twenty-ninth article of the old Bill of Rights, adopted by the same popular act, and declaring that the judges of the supreme judicial court shall hold their offices during good behavior. Thus, in either mode, unless you suppose the conduct of the people will be capricious, unsystematic, and unintelligent in the last degree, the difficulty suggested by the gentleman will be obviated.

But there is a third reason upon which I may very well stand, in point of fact. The effect of such a state of things as the gentleman has hypothecated, will be exactly this—that the existing Constitution will not have been changed at all in the matter of judicial tenures; and when you become satisfied of that fact, it follows, as a principle of universal jurisprudence, that the old Constitution, so far as it is unchanged by what you do, remains entirely unaffected, and in full force. I remember very well, that that principle was advanced, and I listened to an argument of great learning and power based upon it, in the Convention in the State of New York. The question was there raised, what would be the state of things if the new Constitution should not completely abrogate the old, but become part and parcel of it. And I understood the doctrine to have been—the argument was conducted by Mr. Wheaton—that, as a matter of course, if, on collating the new work with the old one, you should find that you have not changed the old Constitution or law—whether it be Constitution, statute, or treaty, or whatever it may be—it remains entirely unaffected. So it does seem to me that the contingency which the ingenuity of gentlemen have discovered, can never happen, and therefore is not a ground of rational objection.

Mr. DANA, for Manchester. I wish to get at a full understanding of this question, so that we may know what we accept or reject. I ask the gentleman whether I understand him as saying that he intends to put the four propositions out to the people as one, to stand or fall together?

Mr. CHOATE. All together.

Mr. DANA. Then I do not understand the remark as to the possible capriciousness of the people in rejecting one part or the other. I understood the gentleman to adopt the suggestion of the gentleman from Salem, (Mr. Lord). We put to the people this ninth proposition to say "yes," or "no" to. If they say "yes," they are accepted, if "no," they are rejected. Well, then, we propose to say here, in Convention, by force

of resolves, that if the people reject that proposition, that rejection shall thereby transfer the thirtieth article of the old Bill of Rights, into our new Constitution. I ask the gentleman whether he apprehends that we have any right, by force of resolution merely, to transfer an article from the Bill of Rights of 1780, to the Constitution of 1853? You say to the people, will you accept or reject proposition "ten?" They answer, "no" Can we say, then, by resolution here, that their negative shall operate to transfer article thirtieth of the Bill of Rights from the Constitution of 1780, to the Constitution of 1853? I put it to those gentlemen as a legal question, whether it can be done?

Mr. LORD, of Salem. I suppose it is not quite unimportant in what sort of form this matter goes out. In my judgment, the people are quite as anxious to have it put into a proper shape, as they are for us to go home; and they are anxious for the last, we all know. Now, Sir, the suggestion which I make in reply to the question put by the gentleman who represents Manchester, is this: He asks if we have the power to say, if the people reject propositions nine, ten, eleven, and twelve, that the twenty-ninth article of the Bill of Rights of the old Constitution shall be called, and shall form the thirtieth article in the new Constitution? Well, Sir, I think the form is pretty unimportant; what I am after, is substance. Numbers nine, ten, eleven, and twelve, are amendments to an article of the Bill of Rights of the old Constitution. The twenty-ninth article of the old Constitution says, for certain reasons, which it recites, that judges shall hold their offices during good behavior. The amendment says, that for these very same reasons, they shall hold their offices according to the tenure of the Constitution. Now we say, it is competent for us to submit to the people the question "will you amend that article?" If you adopt it, you amend that article, if you do not, it stands; and the mere fact that we designate the article in which it shall stand, is an unimportant matter. The whole question which we submit to the people, being, will you amend it; if you do amend it, then it stands amended; if you do not amend it, then the article which we propose to amend, shall still remain a part of the Constitution, unamended, and unaltered. I can see no difficulty in this matter. I think it would be proper to say, that if number "one" is adopted, then the present Constitution is abrogated, but if it is not adopted, then the present Constitution shall stand. I think that is proper, and I think it is just as proper to say if the twenty-ninth article of the Bill of Rights is amended, it shall stand amended, but if the people reject it, then the twenty-ninth article shall stand unamended, and unaltered. I see no difficulty whatever, and I hope gentlemen who are anxious to have this question submitted to the people as an independent one, will overlook the nice technicalities in form, where there is no objection to the substance.

Mr. HALLETT, for Wilbraham. As I am desirous to satisfy every gentleman as to the mode of submitting these provisions to the people, I ask them to look at the different systems upon which the old Constitution and the proposed Constitution have been formed. Now, I said on a former occasion, that it is easy for any gentleman to sit down and take these amendments, and by classifying them under as many chapters as there are in the old Constitution, and putting in every matter into the chapter to which it belongs, form the chapters in place of the old ones. Now you can do that, but in order to carry out that mode, you must sacrifice a great deal of system. Just look at the effect. In the old Constitution are six chapters and thirteen amendments. There are sections in each chapter, and those sections are divided and subdivided into articles. If you follow the old system you will have a jumbled up Constitution, one exceedingly difficult to be cited, for every-body knows that in citing the Constitution to the court, they are frequently involved in extreme difficulty to make themselves understood by the court as to their citation. Now here is an improvement. Every gentleman who has ever looked to an analysis will see that it is an improvement, by taking this new Constitution and making fourteen chapters of it, and subdividing each chapter into articles, and embracing in each chapter the whole subject matter of that chapter. It is a scientific classification, according to all rules, to comprise subjects into chapters and articles. If you desire to have that, you must have the great body of the Constitution presented together. Now I confess that when I began to make these amendments, I was desirous to put them in that form, chapter for chapter, and yet, as I said before, it can be done only at the expense of symmetry. At the same time, however, I yield, though not without doubt of difficulty, to the suggestion of the attorney-general, (Mr. Choate,) so far as to place the subject of the judiciary before the people as a separate question, because it is a distinct subject, though not entirely satisfied as to the manner in which it is brought forward, or that the adoption of it in that particular form will not involve us in difficulties.

These are the reasons why I shall vote for the proposition of the gentleman from Boston, (Mr.

Choate,) while at the same time my convictions are, that we should take as much of this Constitution as a whole as we practically can.

The question was then taken upon the motion of Mr. Choate, to strike out the different portions of number "one" as hereinbefore stated, and to insert them among the separate propositions to be submitted to the people as distinct questions, and it was decided in the negative—ayes, 72; noes, 168.

So the motion was lost.

Mr. BOUTWELL, for Berlin. In consequence of a change of the resolution by the Committee immediately before the last edition of the Report went to the press, an omission has been made which leaves a matter in doubt which ought to be rendered certain. I therefore move to insert after the word "officers" in the following clause of the second article of this chapter, "and all judicial officers may be removed by the governor, with consent of the council, upon the address of both houses of the legislature," the words "for whose appointments different provision is not made in this Constitution, shall be appointed by the governor, by and with the advice and consent of the council, and they".

Mr. LORD, of Salem. I desire to ask the chairman of the Committee whether he understands that these limited justices, those who have power to do certain things, but not to try causes, are judicial officers who are to be removed?

Mr. BOUTWELL. I do.

Mr. LORD. Then I submit that this amendment of the Constitution which the Convention has not voted upon, that the provision of the Constitution in relation to the removal of officers upon the address of the two houses, applies in its terms only to those officers who are appointed during good behavior, while another mode is prescribed by the Constitution for getting rid of justices. Now this article makes justices removable by the governor and council, when they were not removable by the governor and council upon the address to the two houses, under the former Constitution. That is an amendment which is not in the Constitution, and I submit that in order to make this amendment conform to the present action of the Convention, it is necessary to insert after the words "judicial officers" the words "except justices," so that it shall read, "and all judicial officers except justices may be removed by the governor, with consent of the council, upon the address of both houses of the legislature." The clause as it now stands, changes the Constitution without the action of the Convention.

Mr. BOUTWELL. The point suggested by the gentleman from Salem, was considered in Committee, if I understand it; and it arose from this fact, that the first article of the third chapter of the existing Constitution leaves the question as to the power of the governor and council in some doubt in this regard. That article reads thus:—

"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 such concerning whom there is different provision made in this Constitution: *provided, nevertheless*, the Governor, with consent of the Council, may remove them upon the address of both houses of the legislature."

The difficulty about this provision is, that it is a matter of some doubt whether it includes justices of the peace, or excludes them. If it includes them, then they may be removed by the governor as well as other judicial officers. The Committee intended to declare that they might be removed, because they thought such was the design of the Convention. It is, however, for the Convention to say whether justices of the peace shall be removable or not.

Mr. LORD, of Salem. The question before the Convention now is: "Did the old Constitution provide for the removal of justices of the peace?" In the old Constitution we find in the paragraph which the gentleman for Berlin has just quoted, that

"All judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this Constitution: *provided, nevertheless*, the Governor with consent of the Council, may remove them upon the address of both houses of the legislature."

Remove whom? Those officers whose term of office continued during good behavior.

Now here are justices of the peace who are not otherwise provided for; and then the section goes on to say that all commissions shall expire and become void in seven years. I contend that, taking these two articles together, it was not competent for the governor and council to remove them upon the address of both houses of the legislature; and the reason was, that their tenure was limited. This matter was once before a committee of the legislature with a case before them in which they were all of opinion that there should be a removal, but the legislature laid the report upon the table, and took no action upon it.

Now it seems to me that, taking these provisions together, justices of the peace were not designed to be removed. I therefore move to amend

the article by inserting, after the words "judicial officers," the words "except justices of the peace." That clause will then read, "and all judicial officers except justices of the peace, may be removed by the governor, with consent of the council, upon the address of both houses of the legislature."

Mr. WATERS, of Millbury. I hope that this stumbling-block which has always been in the old Constitution, will not be retained. There have been three constructions given to this article referred to by the gentleman from Salem, by men of extreme legal ability; and whenever you have attempted to remove a justice of the peace, this obscurity has been brought up and the respondent has escaped. When the Constitution of 1820 was adopted, Judge Story referred to the difficulty in the third article, and with that provision it has been impossible to remove justices of the peace under the old Constitution. Cases of gross malfeasance have been proved, and yet, in consequence of the obscurity of this article, it is impossible to remove a justice of the peace. Why, Sir, I would sooner undertake to draw a woodchuck from his burrow, ten feet under ground, with a corkscrew, [laughter,] than attempt to remove a justice of the peace under the existing Constitution, no matter how corrupt he may be. It cannot be done, Sir.

Now, it seems to me, that the Committee in having that matter under consideration, have removed that obscurity; and I regard it as one of the most important improvements made in this Constitution. I therefore hope that the article will be retained, as they have reported it. To attempt to remove a justice of the peace involves a great expense; you cannot try a justice of the peace short of two thousand dollars; and I trust, therefore, that this evil may be remedied, and I think the article as it stands does furnish that remedy.

Mr. HATHAWAY, of Freetown. I have my doubts as to whether a justice of the peace is a judicial officer. The court of a justice of the peace never was a court of record. Now, what are justices of the peace, under the Constitution, as we propose to make them? Their authority is exceedingly limited. Instead of making them officers capable of holding courts of record, we make them merely ministerial officers. Trial justices may, perhaps, be regarded as a different class, holding courts of record; but if justices of the peace are forever prohibited from issuing warrants, how can it be that those persons are judiciary officers who cannot try any cases, civil or criminal? It seems to me—unless there is a great mistake somewhere—that it is wholly unnecessary to make the exception of justices of the peace.

Mr. LORD, of Salem. In order to save labor and the time of the Convention, I would suggest that instead of the words "justices of the peace," the words "justices of police courts," should be used.

Mr. HATHAWAY. There is no doubt about their being judicial officers.

Mr. LORD. I offer this amendment because the Convention has already determined another mode for removing them, and there was no such mode for removing them in the old Constitution, any way. If the Convention inserts these words, it will leave the old Constitution, in that respect, as it is.

Mr. HUBBARD, of Boston. If I understand the question, the gentleman for Berlin proposes that justices of the peace may be removable by the governor and council, on address, as in other cases?

Mr. LORD. In order to avoid farther dispute and trouble in regard to this matter, I will withdraw the amendment.

The eighth chapter was then finally passed.

The Secretary then proceeded to read the ninth chapter, relating to the qualifications of voters, and elections—designating the persons entitled to vote; the mode of voting; ballots to be in sealed envelopes; the day of elections; by whom meetings to be called; the officers who are to be elected by a majority of votes; provisions in case of no election by the people; provisions in regard to the election of city and town officers; officers who may be elected by a plurality vote; and provisions in cases of failure to elect. It is as follows:—

ARTICLE 1. Every male citizen, twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of *any national officer, or any officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.*

[ART. 2. All ballots required by law to be given at any national, state, county, district, or city election, including elections for representatives and trial justices, justices and clerks of police courts, shall be deposited in sealed envelopes of uniform size and appearance, to be furnished by the Commonwealth.

ART. 3. Lists of the names of qualified voters shall be used at all elections required by this Constitution. They shall be made out and used in such manner as shall be by law provided. The presiding officers at such elections shall receive the votes of all persons whose names are

borne on such lists, and shall not be held answerable for refusing the votes of any persons whose names are not borne thereon.

ART. 4. All meetings for the choice of national, state, county, or district officers, including representatives, trial justices, clerks and justices of police courts, by the people, shall be held on the Tuesday next after the first Monday in November, annually; and they shall be called by the mayor and aldermen of the cities, and the selectmen of the towns, and warned in due course of law. The manner of calling and holding public meetings in cities, for the election of officers under this Constitution, and the manner of returning the votes given at such meetings, shall be as now prescribed, or as shall hereafter be prescribed by the Legislature.

ART. 5. A majority of all the votes given shall be necessary to the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law, but no such law providing that such officers, or either of them, or representatives to the General Court, shall be elected by plurality, instead of a majority of votes given, shall take effect until one year after its passage; and if at any time after any such law shall have taken effect, it shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in the absence of any such law, if at any election of either of the above-named officers, except the representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall elect two out of three persons then eligible, who had the highest number of votes, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall choose one who shall be the officer thus to be elected.

ART. 6. A majority of votes shall be required in all elections of representatives to the General Court, until otherwise provided by law.

ART. 7. In the election of all city or town officers, such rule of election shall govern as the Legislature may by law prescribe.

ART. 8. In all elections of councillors and senators, and in all elections of county or district officers, the person having the highest number of votes shall be elected.

ART. 9. Whenever, in any election where the person having the highest number of votes may be elected, there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the Legislature.]

Mr. PARKER, of Cambridge. The Report of the Committee appointed to revise and put the amendments into form, was distributed this morning, and it is very evident that sufficient time has not been given for an examination of that Report, so that we can compare it with the resolutions which were committed to the Committee, and with the present Constitution. I am, therefore, of the opinion that the work of this Convention cannot be finished to-night in a proper manner. For the purpose of having an opportunity to make that examination, I move that the Convention do now adjourn.

The question being taken, on a division, there were—ayes, 51; noes, 133—so the Convention refused to adjourn.

Mr. BOUTWELL, for Berlin. In order to make it conform to the resolution referred to the Committee, which includes state as well as national officers, I move that the word "state" be inserted after the word "any," so that it will read:—

Every male citizen, of twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of any national officer, or any state officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.

The question being taken upon the amendment, it was agreed to.

Mr. WATERS, of Millbury. It seems to me that there is a little obscurity as to the manner of electing trial justices. If they are county officers, they are to be elected by a plurality vote, while if they are town officers, they are to be elected by a majority vote. I think this obscurity ought to be remedied, as it may lead to a practical difficulty; and I would suggest to the chairman, whether it should not be remedied now, by deciding whether these officers should be elected by a plurality vote or a majority vote. I move to add the words "including trial justices" after the word "officers," in the eighth article, so that it will read as follows:—

ART. 8. In all elections of councillors and senators, and in all elections of county or district officers, including trial justices, the person having the highest number of votes shall be elected.

The PRESIDENT. That is an amendment of substance, and not of form.

Mr. WATERS. I believe the Convention have decided that trial justices are county officers.

The PRESIDENT. As it is an amendment of substance, it is not, therefore, admissible.

Mr. HALLETT, for Wilbraham. I wish to move a reconsideration of the vote which has just been taken, by which the word "state" was inserted between "any" and "officer." I understand that the construction with regard to national and state officers, out of which this provision grew, was somewhat doubtful. If the

word "state" is put in there, so that it will read "the election of any national officer or any state officer," you declare in your Constitution, that when a man has no right to vote for national or state officers, therefore he has no right to vote for county and district officers. I cannot think that the Convention intend to put any such construction as that upon it. I move to reconsider that vote, for the purpose of either striking out the word "state" or adding "or other," which will amount to the same thing. I do not know how you can give a voter any more power than the Constitution gives him.

Mr. LORD, of Salem. I understand that that amendment was made for the purpose of putting the Constitution into the form in which we have already voted that we want it; and, it seems to me, that if we now change that, it is a change of substance, and not a change of form.

The PRESIDENT. The Chair admitted the amendment, on the ground that it was to reëstablish the original construction.

Mr HALLETT. Is the motion to reconsider, out of order?

The PRESIDENT. The amendment was admitted in order that the article might stand in accordance with the terms of the resolution which the Convention acted upon.

Mr. HALLETT. That is the question. I say it stands as the Convention passed upon the subject, without the word "state," and the introduction of that word changes the meaning.

The PRESIDENT. The Chair will entertain the motion to reconsider.

Mr. HUBBARD, of Boston. I am very confident that the article, as placed in the Constitution, conforms to the resolve which was passed by the Convention. The amendment that was made with regard to the qualification of voters, had reference to article number nine of the Constitution, which prescribes the qualifications of electors of governor, lieutenant-governor, senators and representatives, and an attempt was made to extend it to all classes of elections, when the ground was taken that the Constitution provided for those classes of officers, but the legislature, by statute, provided for the qualification of electors at town meetings, and that it should be left to them to act upon those elections hereafter. I am certain that it corresponds to the resolve, as it was adopted by the Convention.

Mr. BUTLER, of Lowell. I cannot have any doubt in my own mind, that the introduction of the word "state" there, is meant to designate them as contradistinguished from national officers. When I say state officers, I mean officers who act under the authority of the State; and when I say national officers, I mean those officers who act under the authority of the general government. The two terms are merely used in contradistinction to each other. I think that the legislature, or the judges of the supreme court, whenever they are called upon to construe it, would consider it to apply to electors in all elections. I am not in favor, therefore, of the motion to reconsider. I doubt the propriety of the construction of the gentleman for Wilbraham. The provision is, that any man "shall have a right to vote in *such* election;" that is all. What election is that? Of course it must be State elections; and what can you elect at State elections? Every officer in the Commonwealth of Massachusetts, in my judgment. I am content with it, Sir, as it is. I am not very strongly in favor of having a tax qualification for voting for anything under Heaven; and I insist that no man shall have such qualification, but what is put in in conformity with the resolve as it was passed. I have no doubt as to the construction of that resolution, and I hope the motion to reconsider will not prevail.

Mr. HALLETT. The assurances of gentlemen, that they have no doubt about the construction, does not relieve my difficulty; I wish to place it beyond the possibility of doubt, and to make it certain. The proposition which was adopted by the Convention was, the proposition that no tax qualification should be required to qualify any person to vote for state or national officers. It struck out, consequently, that provision contained in the ninth article of the old Constitution, which declared that every male citizen, of twenty-one years of age and upwards, —excepting paupers and persons under guardianship—who shall have resided within the Commonwealth one year, &c., and who shall have paid a tax, &c., in the town in which he shall claim the right to vote, shall have a right to vote for governor, lieutenant-governor, senators and representatives. Now, you say that persons without paying taxes, if they have the residence, shall have the right to vote for any national or any state officer; and, thereby, you say that they shall not vote for town representatives, because town representatives are not state officers; and I do not wish to go before the supreme court of this Commonwealth, upon the construction whether a representative of a town is a state officer, or an officer of the town. The only position upon which you stand here, in maintaining town representation, is, that the representative is an officer of the town, and not an officer of the state. If he comes here, and helps to make laws which govern the whole State, he is not an officer of the

Commonwealth of Massachusetts, but he is an officer acting for the town that elects him—he is a deputy of that town. With that construction, no person has a right to vote for a town representative unless he pays a tax. For this reason, I want the word "state" stricken out, and I should like to have the word "other" inserted, so that it will read "any national officer, or any other officer required by this Constitution," &c.

The PRESIDENT. It is not competent to strike out the word "state," inasmuch as that word was in the original resolution; the gentleman may make any proposition to change the form which does not change the substance.

Mr. HALLETT. If that cannot be done, I should like to add the words "or other" between "state" and "officer," so that it will read, "any national officer, or any state or other officer," &c.

The PRESIDENT. That is an amendment of substance.

Mr. HALLETT. I think not, Sir. Then I ask general consent to put the proposition in this form; it certainly can do no injury, and it may prevent much confusion hereafter.

The PRESIDENT. If no objection is made, the gentleman can make the modification.

Mr. ASPINWALL, of Brookline. I object, Mr. President.

Mr. MILLER, of Wareham. I wish to state a difficulty which I have in my own mind. In the ninth article you provide for subsequent trials where there is a failure of election, because two persons have an equal number of votes; but in the choice of senators and councillors the return is to be made seventeen days before the first Wednesday in January. Now, if it should so happen that any two candidates for the office of senator in any district voted for have an equal number of votes there would be no chance that another election could be had before the meeting of the legislature, and certain districts might thereby be deprived of their senators. I make no motion; but merely name this for the consideration of the Convention.

No farther amendment being proposed, the Secretary proceeded to read chapter ten, as follows:—

ARTICLE 1. The following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of the Commonwealth, before he shall enter upon the duties of his office, to wit:—

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as [here insert the office], according to the best of my abilities and understanding, agreeably to the Constitution and laws of the Commonwealth. So help me God."

[*Provided*, that when any person, chosen or appointed as aforesaid, shall be conscientiously scrupulous of taking and subscribing an oath, and shall for that reason decline taking the above oath, he shall make and subscribe his affirmation in the foregoing form, omitting the word "swear," and substituting the word "affirm;" and omitting the words "So help me God," and subjoining instead thereof the words "And this I do under the pains and penalties of perjury."]

And the said oaths or affirmations shall be taken and subscribed, by the governor and lieutenant-governor before the president of the Senate, in presence of the two Houses *in convention; and by councillors before the president of the Senate and in presence of the Senate;* and by the senators and representatives before the governor and council for the time being; and by the residue of the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by law.

ART. 2. No governor, lieutenant-governor, or judge of the Supreme Judicial Court *or Court of Common Pleas*, shall hold any other office under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other office, or receive any pension or salary from any other State, or government, or power whatever, *except that they may be appointed to take depositions, or acknowledgments of deeds, or other legal instruments, by the authority of other States or countries*

[No person shall hold or exercise at the same time more than one of the following offices, to wit: the office of governor, lieutenant-governor, senator, representative, judge of the Supreme Judicial Court, or Court of Common Pleas, secretary of the Commonwealth, attorney-general, treasurer, auditor, councillor, judge of probate, register of probate, register of deeds, sheriff or his deputy, clerk of the Supreme Judicial Court, or Court of Common Pleas, clerk of the Senate or House of Representatives; and any person holding either of the above offices shall be deemed to have vacated the same by accepting a seat in the congress of the United States, or any office under the authority of the United States, the office of postmaster excepted. And no person shall be capable of holding at the same time more than two offices, which are held by appointment of the governor, or governor and Council, or the Senate, or the House of Representatives, military offices, and the offices of justices of the peace, justices of the peace and quorum, notaries public, and commissioners to qualify civil officers, excepted.]

ART. 3. And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

ART. 4. All commissions shall be in the name

of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

ART. 5. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue, and be signed by the clerk of such court.

ART. 6. All the laws, which have heretofore been adopted, used, and approved in the Province, Colony, State or *Commonwealth* of Massachusetts, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

No amendment being offered to chapter ten, the Secretary then read chapter eleven, as follows:—

ARTICLE 1. The governor shall be the commander-in-chief of the army and navy *of the Commonwealth, and of the Militia thereof, excepting when these forces shall be actually in the service of the United States; and shall have power to call out any part of the military force to aid in the execution of the laws, to suppress insurrection, and to repel invasion.*

[ART. 2. All citizens of this Commonwealth liable to military service, except such as may by law be exempted, shall be enrolled in the militia, and held to perform such military duty as by law may be required.

ART. 3. The militia may be divided into convenient divisions, brigades, regiments, squadrons, battalions, and companies; and officers with appropriate rank and titles may be elected to command the same. And the discipline of the militia shall be made to conform, as nearly as practicable, to the discipline of the army of the United States.

ART. 4. The governor shall appoint an adjutant-general, a quartermaster-general, and such other general staff-officers as shall be designated by law; who shall be commissioned by him for the term of one year, and until their successors shall be commissioned and qualified. And the adjutant-general and quartermaster-general shall have salaries fixed by law, which shall be in full for all services rendered by them in their several offices.

ART. 5. The major-generals shall be elected by the votes of the brigadier-generals and field-officers of the brigades, regiments, squadrons, and battalions of the respective divisions.

ART. 6. The brigadier-generals shall be elected by the votes of the field-officers of the regiments, squadrons, and battalions, and captains of companies, of the respective brigades.

ART. 7. The field-officers of regiments, squadrons, and battalions, shall be elected by the votes of the captains and subalterns of companies of the respective regiments, squadrons, and battalions.

ART. 8. The captains and subalterns shall be elected by the members of the respective companies.

ART. 9. All elections of military officers shall be by a majority of the written votes of those present and voting, and no person, within the description of a voter as hereinbefore specified, shall be disqualified by reason of his being a minor.

ART. 10. The Legislature shall prescribe the time and manner of convening the electors hereinbefore named, of conducting the elections, and of certifying to the governor the names of the officers elected.

ART. 11. The several officers elected shall be forthwith commissioned by the governor for the term of three years from the dates of their respective commissions, and until their successors shall be commissioned and qualified.

ART. 12. If the electors of the several officers before named shall refuse or neglect to make an election, for the space of three months after legal notice of a meeting for that purpose, the governor shall appoint and commission for three years a suitable person to fill the vacant office, with the advice of the Council if the vacancy be that of a major-general, or with the advice of the major-general of the division in which the appointment is to be made, if the vacancy be of an inferior grade.

ART. 13. Major-generals, brigadier-generals, and commandants of regiments, squadrons, and battalions, shall severally appoint such staff-officers as shall be designated by law in their respective commands.

ART. 14. All non-commissioned officers, whether of staff or company, and all musicians, shall be appointed in such manner as may be prescribed by law.

ART. 15. All officers of the militia may be removed from office by sentence of court-martial, or by such other modes as may be prescribed by law.]

Mr. OLIVER, of Lawrence. This chapter being one of those things which are put into the omnibus to sweeten it, according to the idea of my friend from Salem, (Mr. Lord,) and as I am very desirous to vote for it just as it is, I move to take it out from number "one," and put it among the propositions which are proposed to be sent out to the people separately, as number "nine."

The PRESIDENT. It is not competent at this stage to move to strike out the whole chapter.

Mr. BUTLER, of Lowell. As in my judgment, it is best that we never shall adjourn this Convention but once, and then without day, and in order that we may finish our work without feeling that we have not had supper, I move that we take a recess for one hour, until eight o'clock.

The motion was agreed to, and the Convention accordingly took a recess until eight o'clock.

## EVENING SESSION.

The Convention reassembled at eight o'clock.

No amendment being proposed to chapter eleven, chapter twelve—in regard to the University of Cambridge, the school fund, and the encouragement of literature—was read, and finally passed without amendment, as follows :—

ARTICLE 1. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated into 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 their successors in that capacity, 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, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever. *But the Legislature shall always have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to the President and Fellows of Harvard College, or to alter, limit, annul, or restrain, any of the powers now vested in them:* provided, *the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted, for the purposes of education, in this Commonwealth.*

ART. 2. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

ART. 3. And whereas by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said Act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; it is declared that the governor, lieutenant-governor, Council and Senate of this Commonwealth are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the overseers of Harvard College: *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.

[ART. 4. It shall be the duty of the Legislature, as soon as may be, to provide for the enlargement of the School Fund of the Commonwealth, until it shall amount to a sum not less than two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.]

ART. 5. 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; 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.

Chapter thirteen, containing miscellaneous provisions, was next read by the Secretary, as follows :—

ARTICLE 1. A census of the inhabitants of each city and town in the Commonwealth, on the first day of May in the year 1855, and on the first day of May of each tenth year thereafter, shall be taken and returned into the secretary's office, on or before the last day of the June following the said first day of May in each of said years; and while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality,

there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

[ART. 2. Persons holding office by election or appointment, when this Constitution takes effect, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this Constitution; when all powers not reserved to them by the provisions of this Constitution shall cease: *provided, however*, that justices of the peace, justices of the peace and of the quorum, and commissioners of insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid. All laws in force when this Constitution goes into effect, not inconsistent therewith, shall continue in force until amended or repealed.

ART. 3. The Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in cases where provision is made therein.

ART. 4. The governor, by and with the consent of the Council, may at any time, for incapacity, misconduct or maladministration in their offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices of police courts: *provided*, that the cause of their removal be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes, who shall hold office until the final action upon the question of removal.

ART. 5. Whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of governor, lieutenant-governor, councillor, senator, member of the House of Representatives, and town and city officers, the governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, trial justices shall not be deemed to be town officers for this purpose.

ART. 6. All elections provided to be had under this amended Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, one thousand eight hundred and fifty-four.

ART. 7. This Constitution shall go into operation on the first Monday in February, in the year one thousand eight hundred and fifty-four.

ART. 8. The terms of all elective officers, not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.]

ART. 9. In order to remove all doubt of the meaning of the word "inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation, where he dwelleth, or hath his home.

ART. 10. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

Mr. BOUTWELL, for Berlin, moved to amend the first article in the third line, by striking out the figures 1855, and substituting therefor the words "one thousand eight hundred and fifty-five."

The amendment was agreed to.

Mr. HILLARD, of Boston, moved a verbal amendment to the fifth article in the last clause, by inserting the word "that" after the word "however," so as to make the clause read:—

*Provided, however*, That trial justices shall not be deemed to be town officers for this purpose.

The amendment was adopted.

Mr. BOUTWELL moved to strike out the word "amended" in the second line of the sixth article as being surplusage, the article as it stood reading:—

All elections provided to be had under this *amended* Constitution, &c.

The motion to strike out the word "amended," was agreed to.

Mr. CHAPIN, of Worcester, moved to amend the fourth article in the seventh line by inserting after the word "justices" the words "and clerks," so as to make it read:—

ART. 4. The Governor, by and with the consent of the Council, may at any time, for incapacity, misconduct or maladministration in their offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices and justices and clerks of police courts, &c.

Mr. HATHAWAY thought the amendment unnecessary, as clerks of "police" courts were certainly "clerks of courts."

Mr. CHAPIN regarded the term "clerks of courts," as heretofore used, as applying to clerks of higher courts, and not to police courts.

The amendment was agreed to.

Mr. MASON, of Fitchburg, moved to amend the sixth article in the fourth line by inserting

after the word "November" the words "in the year," so as to make the article read:—

ART. 6. All elections provided to be had under this Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, in the year one thousand eight hundred and fifty-four.

The amendment was agreed to; and

The thirteenth chapter was then finally passed.

The Secretary then proceeded to read the fourteenth and last chapter of the Revised Constitution, providing for future revisions and amendments of the Constitution of Massachusetts, as follows:—

[ARTICLE 1. A Convention to revise or amend this Constitution may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be deemed and taken to be the will of the people that a Convention shall meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the largest number of representatives which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments, as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

ART. 2. Whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an Act for the calling of the same, and to submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in this Commonwealth.]

ART. 3. If, at any time hereafter, any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

[ART. 4. The Legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State into single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of senators and representatives.]

Mr. MORTON, of Taunton. I should be glad, Mr. President, even at this late hour of our deliberations, to gain, if I could, the attention of the Convention for a few moments. I certainly shall occupy but very little time, because there are reasons which will necessarily limit me.

Thus far, I have avoided intruding myself upon the Convention in regard to this important and most objectionable measure, except in offering a merely verbal amendment. I had the honor, Mr. President, to be a member of the Committee appointed to revise and prepare the amendments of the Constitution to be submitted to the people of the Commonwealth. It gives me great pleasure—though I take little credit to myself—to say that I think that that Committee deserves great credit for their ingenuity and industry in arranging these amendments. The Committee in their plan of submitting them to the people, have thought proper to form them into groups—some of them in very large masses, and others in small portions, or rather to form one group comprehending all the most important amendments, and nine-tenths of the whole, and to submit each of the minor ones separately. Some days ago I prepared a resolution, the object of which was to give this Committee instructions on this subject; but the pressure of other matters prevented me from offering it to the Convention, and the Committee assumed the authority to arrange the proposed amendments without any action of the Convention; and under these circumstances, I beg leave to offer a very few suggestions in relation to the scheme of the Committee, and to the manner in which I think these amendments should be presented to the people.

Sir, I think that it is our duty as a Convention, in executing the trust which has been confided to us, to prepare these amendments in such manner as to give the people the best possible opportunity of acting upon them freely and understandingly, and without any embarrassment or constraint. This can only be done by allowing them to vote separately upon many different points. I had supposed, until recently, that we were all agreed that the several distinct propositions should be submitted to the people singly; and it did not enter my mind that the mass of them were to be put together and acted upon by the people jointly, so as to deprive them of the opportunity of approving of some propositions and disapproving of others. The Committee, however, have seen fit to decide otherwise, and have formed the major part of these amendments into one large group, in regard to which I will say a few words. At this time it is not possible to enter into a full argument of a question involving so many important considerations; I think that it would have been more wise and safe to have followed the example which was set us more than thirty years ago, and to have submitted these several propositions to the people, who could have acted upon them separately, without restraint on the one hand or temptation on the other. It appears to me that we have adopted a course which trenches upon the rights of the people, in putting these propositions altogther, for by adopting this mode, we prevent the people from acting distinctly on each amendment. You say to them imperatively and authoritatively: "Take this whole group, and either reject the whole or accept the whole. We, in our wisdom, have devised a perfect scheme. We will not endanger its harmony by permitting you to reject any of its parts. We have one object in forming the whole scheme, which you are bound to believe is for your good. It must be adopted as we have devised it. You must not be allowed to mar the symmetry of the plan, or defeat its object by altering or rejecting any of its members."

Sir, it is altogether likely that many of the people, like myself, will find in this scheme some propositions which they would wish to adopt, and others which they would wish to reject. But no such liberty is here permitted to them; and I ask if this is not transcending our delegated authority, and exercising arbitrary and dictatorial power? What right have we to bind up the whole people in this way? Do we not forget that the people must make the Constitution, and that we are only instruments to prepare and lay before them such propositions as they may wish to express their pleasure upon? Do we not pervert the purpose of our appointment, when we undertake to devise plans to arrest from the people their inherent right to judge of the proposals which their agents have formed, by their directions? Do we not assume to act as masters, when we are only servants? It may be that some of the propositions are so connected and dependent on each other, that you cannot separate them. For instance, the amendments in relation to the Council and the Senate, are dependent, and therefore indivisible. You cannot separate them, because the Council Districts are based upon the Senatorial Districts, and should the senatorial basis be rejected, the provision for the Council would be impracticable. I think, therefore, the union of these two provisions unobjectionable. But, the amendment in regard to the House of Representatives, the most important and the most obnoxious one in the whole list, stands on entirely different ground. And no substantial reason can be assigned for connecting all sorts of propositions, except those of doubtful popularity.

I am aware of the ingenious reasons which the members of the Committee have offered in regard to this point. Gentlemen so correct, and perhaps I might say, so fastidious in their tastes, so ambi-

tious of elegance of composition, and so proud of harmony of diction, might well say they thought that, by grouping these questions together they could put them in more symmetrical form, and make them look more elegant on paper. But let me ask, gentlemen, which is of the most importance—the beauty of the phraseology, or the value of the principle? I will not discuss this matter farther; but I had supposed that we should have had the fullest and fairest scope of testing, at the polls, the estimation in which the people hold all these amendments; and that they might have said, separately, whether they were for senatorial districts, or against them; for the election of officers by the people, or their appointment by the legislature or executive; for the election of representatives by towns, or by equal districts; for the abolition of a poll tax, or against it; for the adoption of the secret ballot, or against it; and so on through the whole category, without having other matters connected with these questions. By presenting these questions altogether, you coerce the people on the one hand, or offer a bribe to them on the other. You say to them, in effect: "If you will take this bitter thing, you shall have also this sweet thing;" or it may operate upon them in the way of constraint, inasmuch as you say: "If you do not accept this which you dislike, you shall not have that which you do like." This, I contend, is an infringement of the rights of the people. It is equivalent to saying to a religious man: "You shall have a church, if you will take an assignation house along side of it, but you shall not have the one without the other;" or to an educational man: "You may have a school, provided you are content to have a gambling house next door to it." Now, Sir, if the people view this matter as I do, they will say, indignantly, No! let the church go; let the school go; if we cannot have what is righteous and just, without taking what is unrighteous and unjust, we spurn them both. We will not be compelled to take things which are so offensive to us, in order that we may obtain other things which we desire.

But I will hasten on with these suggestions, and come to some points which are more practical, and which will, perhaps, stand a little better chance of gaining attention.

I fear, Sir, that we have somewhat forgotten the mission upon which we were sent to this house; that we have been acting together in the exercise of unrestrained power, till we have forgotten the source of our authority, and have not sufficiently borne in mind the wishes and rights of those who stand behind us, to act upon the propositions which we may submit to them. I fear that, while we profess democracy, and a love for the people, we have acted on an opposite principle. Distrust of the people is stamped on almost every act. Look at what was said in regard to the State credit. It was avowed, by some of the majority—I do not remember whom—that the people could not be trusted with power in regard to this matter. And what was the result? They were divested of the power to decide where the credit of the State might be loaned or given away. What! Not trust the people with the management of their own money, and their own credit! And, Sir, it has been just so in regard to every other act. No principle, however sound and just, is fully carried out. So it was in regard to the secret ballot. We all wanted it in some elections, but a majority were not willing to apply it to all, and the people were not allowed to determine for themselves whether they would have it extended to any, or in what cases they would adopt it. Just so, likewise, was it in regard to the plurality question. You would not let the people decide the question, for or against it, as they might choose. And in regard to the subject of representation, the most important subject which was submitted to us, we have not only disregarded the well known wishes of the people for a reduction of the House, but refused to allow them to decide between the town and district system.

Sir, from the beginning, while we have continually heard professions of love for the people, and a desire to be governed by their wishes, our acts have shown a want of confidence in them, and a disregard of their wishes and interests. This has made itself manifest, not only in our acts and votes, but has occasionally peeped out of our speeches. Those from whom we have heard most of the sodality of mankind and the brotherhood of the whole human family, have now and then given us an inkling of their feelings by comparing large classes of our inhabitants "to the cattle in the farmer's field, and the birds that fly over them;" nay, to that cunning, thievish, carrion bird, the "crow." I would not quote the hasty expressions of an individual, especially a frank, sincere, and high-minded one, did they not, in my mind, indicate the feelings and sentiments of a class who, from their ability, their eloquence, and their other distinguished qualities, seem to have a controlling influence over the deliberations of this Convention.

Mr. EAMES, of Washington. I rise to a point of order. If the gentleman is going to move an amendment, I would like to have it read, that I may be looking it over.

Mr. MORTON. If the gentleman from Wash-

ington will try to repress his wishes for a few moments, he shall be gratified with the proposition; or, if he cannot restrain his curiosity, I will gratify him now.

Mr. EAMES. The fifteen minutes allowed the gentleman from Taunton will expire directly, and I would like to know what the amendment is, before the time expires.

Mr. MORTON. The gentleman will soon be gratified.

I wanted, Sir, to say a word in relation to the ground which several of the Committee have taken upon this subject. They have told us that their main desire, in putting the amendments together in this shape, was to preserve the symmetry and harmony of the instrument, and the beauty and orderly arrangement of the pamphlet to be published. I am afraid that gentlemen deceive themselves as to the real cause which has induced them to adopt this course. I am bound to believe the gentlemen are sincere in their professions, and honestly believe that they are governed by the causes which they assign. But if they will look at the matter a little more disinterestedly, they will perceive how very difficult it will be to make outsiders believe it, and to prevent them from judging that, in order to carry some favorite but objectionable scheme, all the popular measures have been connected with it, to induce the people to vote for it, and thus to give it the force of a popular adoption, when it may be that a majority of them are opposed to it. They may possibly adopt the language of one of the Committee, on another occasion, and say: "The lion's skin is not big enough—not half big enough, to conceal that other animal, which I will not name. His ears are in full view."

Now, Sir, for my amendment. I move that the fourth article of the chapter now under consideration, be transferred to the amendments which are to be passed upon separately; that it stand and go out to the people as a separate proposition.

The fourth article is as follows:—

ART. 4. The legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of Senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each: and shall also divide the State in single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of Senators and Representatives.

I suppose that gentlemen understand what I mean. But I was about to say that I do not question the motives of the Committee, but this motion, it seems to me, will test their sincerity. Unless other reasons than those assigned influence their minds, they cannot hesitate to vote for this motion, for it comes perfectly within all the reasons given and all the rules laid down for the classification which they have made. In the first place, this is entirely new matter—a new proposition standing entirely by itself, having no precedents in the old Constitution.

In the next place, it is entirely unconnected in any way with any other part of the old Constitution, or the amendments; and if you were to strike it all out, every other portion would be perfect without it, just as it is if adopted; it in no way interferes with the rest of the instrument either with or without amendments. It does not in any degree stand in the way of the adoption or rejection of any or all the other amendments. If the whole are adopted, this is perfectly consistent with them all. If any parts are adopted, this still stands perfectly consistent with them, be they whichever they may. So if all be rejected, this stands in perfect consistency with the old Constitution. I therefore can see no reason why it should be retained in its position in this chapter, rather than stand by itself. It proposes a new method of amending or altering our Constitution; and if it is adopted, then, whatever legislature may be in power, might go on and execute the provision. There can, therefore, be no possible reason why this should be retained in its present place; unless it be to have an influence upon other measures which gentlemen wish to get adopted without the approbation of the people. I will not impute any such motives to any member of the Convention.

It is well known that if the Constitution which you now propose should be adopted, it will introduce a different basis of representation, and will place the power to elect a majority of the House of Representatives into the hands of about one-third of the people. Now, I will inquire whether any gentleman wishes to prevent the

adoption of this provision until this gross inequality be introduced into the House of Representatives? Are they afraid to trust anybody with the administration of this but the one-third House of Representatives? I would not do any one—certainly not one of the Committee—the injustice to suppose that they had any desire so unrighteous.

One word more in relation to the necessity of the adoption of this provision. We never can have an amendment of the House of Representatives without it. When the one-third get the power they never will surrender it. The amendments provide that under them no constitutional amendments can be proposed unless they are adopted in two successive years, by a vote of two-thirds of the House. It may, therefore, be safely assumed that you never will have an amendment of the House of Representatives made in this way; for one-sixth of the people of the State, and those the most interested portion, could always prevent any such amendment. One-third of the House of Representatives could prevent the amendment from passing, and that third might be chosen by only one-sixth part of the whole people of the Commonwealth. Under these circumstances, I will ask, do you desire to confine the execution of this provision to the action of so very small a number, especially when it is considered that it is upon the very subject of their own power, which men everywhere are so very reluctant to yield?

But I see, by the President's exceedingly kind intimation, that my time has expired, and so I will take my seat. There were a few words more that I would have been glad to have added, had time permitted.

Mr. WILLIAMS, of Taunton, asked for the yeas and nays on the motion of Mr. Morton; and the question being put, the result was—ayes, 37; noes, 189.

So the yeas and nays were not ordered.

Mr. WILSON obtained the consent of the Convention to correct two verbal mistakes in the article under consideration.

Mr. STETSON, of Braintree. I trust, Mr. President, that the Convention will separate this fourth article from chapter fourteen, and put it in among the miscellaneous amendments. I suppose —I did suppose, and I have supposed—that the people were to have the right to decide upon such amendments as might be made by us, so far as it could be done, by having the opportunity to vote upon them in a separate and distinct form. I did not expect that the doctors who have had the preparation of these amendments were to put them into the form of a bolus dose. I am generally willing to take such doses as the doctors prescribe, but if they give too large a dose, it sometimes makes a person sick, and he throws it all up; and it may be that the people will serve this Constitution in the same way. [Laughter.] But, for my own part, I prefer to take medicine in a homœopathic way, and I think we should do better to administer this new Constitution to the people in homœopathic doses. But if it is the pleasure of the Convention to send all these numerous alterations and changes and amendments out to the people, to be adopted or rejected together, and if the people sanction it and submit to it, I have nothing to say. Out of so many new provisions, however, I think we can well separate this, and put it as a separate proposition, as suggested by the gentleman from Taunton. I should like to have all these propositions acted upon by the people separately, so that every man could vote for what he liked and vote against every thing else; but I presume the Convention will decide otherwise, and the people will be obliged to take it as we give it to them. I trust that, upon sober reflection, however, the Convention will agree to the amendment of the gentleman from Taunton, and put this fourth article into the supplement.

Mr. BUTLER, of Lowell. I should be sorry to take up the time of the Convention at this late hour, but there are two or three things that have lately been said upon this amendment, that I cannot allow to pass, so far as I am concerned, without a word of reply. I had supposed, that after the very learned, able and experienced gentleman from Taunton had proposed the district system, in various ways—after he had called for it four times and had had the yeas and nays called upon it three several times, in various stages, that he would hardly have wished, at this hour of the night, to trouble us with it again. I have no doubt but that what he has done has been done in perfect good faith—I am bound to suppose that—but I will state what seems to be the result to which he has arrived. He professes to be a friend to the district system; he is anxious to have the district system adopted in this Commonwealth; but he has found that the district system is unpalatable to a very large majority of this Convention—I may say, to almost if not quite a hundred majority—and now, if he really wants the district system, when he finds it is so unpalatable, why does he object to let us put it in here and sweeten it with some other propositions before it goes out to the people? Why does he object to our sweetening it and sending it out to the people, telling them that they must take the bitter with the sweet? That is a very fair

comparison, I admit; for in every position in which we find ourselves in this world, we are bound to take the good and bad together.

Mr. MORTON. The gentleman entirely misunderstood me; and if he will allow me, I will state what I said. I stated, or meant to state, to the Convention, that the proposition, although it was not very palatable to me, yet it might be so to a good many people, and the putting it in there might induce some people to vote for the House of Representatives. While I am up, I wish to correct another statement of the gentleman, about calling for the yeas and nays. I believe I have not called for them this session.

Mr. BUTLER. I can say the same thing again. *Qui facit per alium, facit per se.* Perhaps the gentleman will not deny that he asked his colleague to call for them.

Mr. WILLIAMS. I will answer for myself, that I was not asked to call for them.

Mr. BUTLER. I spoke to one gentlemar from Taunton, and not the other.

Mr. MORTON. I will answer then, that I did not say a word to that gentleman about it.

Mr. BUTLER. It was all accidental, then. The gentleman from Taunton went over there by accident, and his colleague called for the yeas and nays by accident! I am bound to believe it.

Mr. WILLIAMS. I want to know if the gentleman intends to impute prevarication to me.

Mr. BUTLER. Not the least in the world; what are you so anxious for? "Let the galled jade wince—my withers are unwrung!" What is the trouble? I will only say again that the yeas and nays upon these various propositions have been called for three several times. The gentleman from Taunton says we take the bitter with the sweet. I call it bitter, but perhaps it may be like the little book in the angel's hand, sweet in the mouth and bitter in the belly. I call this bitter, and I say, put the sweet with it. I ask the gentleman in all soberness,—I respect his grey hairs, for I am bound to respect them,—what part of this Constitution he feels it his duty to compare to an assignation house? He compares the district system to a church; but where is the assignation house? He compares some provisions to a school; but where is the gambling house in this Constitution? I submit, with great deference to the gentleman, for I am bound to defer to his experience; I am bound to defer to his taste; but I simply ask him whether it is either good taste or good logic, and I hope he will excuse me if I add, good manners, thus to characterize that which has met the approval of this Convention. I do not think he meant it; I think it was a slip of the tongue. If it had come from a young person of hot blood, after dinner, I should have known that it was a slip of the tongue; but I scarcely expected such a remark from an elderly gentleman of the character of the gentleman from Taunton. I will call attention to one other statement of that gentleman. He says that we never can get our Constitution amended, because it requires two-thirds of the House of Representatives. Why, Sir, this proposition requires, first, that the legislature should submit the district system. They cannot help it. They are bound, constitutionally, by a majority vote, to do it. They will be obliged to submit it in 1856.

Mr. MORTON, (interposing). I spoke of the ordinary provisions of the Constitution; I had no reference to this at all, except so far as the provision goes that it shall require two-thirds. I am surprised that the gentleman should have got that idea from anything that I said.

Mr. BUTLER. I understand the state of the case to be this, they must vote in 1855 by a majority of the House of Representatives, and of the Senate——

Mr. MORTON, (in his seat). If you adopt this, I admit it.

Mr. BUTLER. If this is adopted. Now, Sir, he wants a district system, and we have put this in here where every gentleman who has spoken to-day thinks is the best chance of having it adopted, by putting the whole together. Now I ask what objection there can be to it. I will tell what I think will be the effect of his proposition, although of course I know he does not mean it. We all know that a district system must come, sooner or later. Every-body believes that the State has got to be districted for choosing representatives, either before or after this is adopted by the people, and I do not see any difference which it is. Now the friends of the Convention come forward and say to the people: "We are ready to give you a district system if you want it." I do not think they do; but if they do they shall have a chance at it. Why are not gentlemen ready to take it? I will tell you what, in my judgment, is thought to be the effect of it. I think some gentlemen—I do not refer to anybody in particular, and so I shall not run under your hammer, Mr. President—some gentlemen are afraid to have it go out as a well-framed, well-put-together proposition; they are afraid to have it, and why? Because then we can say to the people, not that we give them churches and assignation houses, and they must take both, or neither; we say to them: If you want a district system, and believe that you are ready for it, vote for your Constitution and you will get it; but if you do not, if you prefer the system which was sustained

by this Convention by more than a hundred majority, you are at liberty to retain it and there is no harm done.

Now what is there wrong in that? Is anybody wronged, anybody troubled, anybody harmed. Every-body agrees that if you put out the proposition alone it does not stand quite so good a chance. Gentlemen who want the district system, why not march up and take it. I believe that if this is put into the Constitution it goes by forty thousand majority at least, in the Commonwealth. It spikes the guns of certain persons, and that is the trouble. Now they want to get this out alone. I believe, in their opposition to this proposition, that we have the last expiring trick of conservatism. The last. And as this proposition is voted down by the Convention, the last shot is fired, and we shall go out to the people as we have been here, in spite of now and then a man against us whom we expected to be for us, and who if he had not professed to be a friend of reform, would have had no more chance of getting here than he would of getting to Heaven, and that is putting it strong enough. [Laughter.]

Gentlemen will find that we are not of those who do not dare to trust the people. We say we trust you with anything, but we propose to send you a machine perfect in all its parts; not a hobbling machine, with this thing left out, and that thing left in, where they ought not to be; not such a thing as that, but a thing perfect in all its parts. That is the Constitution which we propose to send out to the people, and not such a concern as will enable some judge, a few years hence, to come forward and put it in a revised form, and claim a copy-right of it. I thank God that we are to have a Constitution which no judge, present or to come, can obtain a copy-right of, and which we cannot print until we get his permission. We have come up here to have a Constitution and get rid of a patent.

Mr. HILLARD, of Boston. The remarks of the gentleman from Taunton, (Mr. Morton,) have opened a pretty wide range of discussion and inquiry. It is far too late, and the Convention far too impatient to justify me in travelling far in any of those paths. But I beg leave to ask the attention of the Convention for a very few moments, to considerations suggested by what fell from his lips.

What is the work to which we have been addressing ourselves? and in what spirit should we have approached that work? We have been making a Constitution, the highest secular duty which can be devolved upon man under a free government. The relation of constitutional law to legislative enactments has been somewhat discussed in books,—it has been treated by writers upon political philosophy,—but the relation of constitutional law to the political parties into which the country has been divided, has, as yet, not attracted the attention of writers upon politics; and yet it is a most important and novel branch of political science, and one which, each day, is assuming a new importance.

What is a model Constitution, and what would be a model Convention for making a Constitution? It would be a Convention anterior to the formation of parties, in which every man might reasonably expect to find himself, at some future time in the minority, because the object of a Constitution is to protect the minority. Therefore the best Constitutions are those which have been framed at a time when no man could tell where the political changes of the future might place him. It is one of the many felicities of our own history that the great political parties of our country grew out of the Constitution of the United States, and that the Constitution of the United States did not grow out of the mere political parties of the country. It was a difficult task to make a Constitution in 1789, and I think it would be an impossible task to make one now. If we should succeed, it would not be so good an instrument as that which we now enjoy. The greater majority any political party has in a Convention, the more magnanimous they can afford to be to the minority. But if party politics, if political parties —and I make this as a general remark with no particular application to this Convention, for I would not utter a word of recrimination or reproach, not a word to jar upon the harmony of feeling with which we should break up—if political parties, instead of finding their vent in our primary assemblies, and in our legislatures, come to fight their battles in a Constitutional Convention, I have only to say that it is an element of peril in our institutions, never contemplated by their founders, and never considered by writers upon political science, because you see that the result will be that the more powerful a majority is, and the more that majority are actuated by party feelings, the more they depart from the true functions of a Constitutional Convention, which is to make a Constitution which shall protect the minority. If, on the other hand, they come together with the assured purpose of oppressing the minority, and of strengthening the power which they hold in their own hands, so that the sceptre which they hold shall be transmitted in a lineal line of succession, I say they steer by a false star, and never can land upon a safe shore. I would be no prophet of evil, but here we are making arrangements for a Constitutional Convention every twenty years. In every State of the Union

the Constitutions are renewed about once in a generation, and so far as experience has gone, each Convention that has been gathered together has had more of partisan feeling than its predecessor, and each succeeding Constitution has reflected more of the party spirit of the majority, and has more and more departed from its proper function, which is to protect the minority; and as a general rule, wherever there has been a change, the earlier Constitutions have been the best. Now I will make no charge. Let every man judge and speak for himself, but I put it to gentlemen who have had the responsibility of this Convention, and I ask them,—not here and now, in the glow and heat of our struggles and contentions, but when they go home and commune with their own hearts,—I ask them to question themselves if they have approached this high work in the high spirit in which they should have done, or whether the first impulse, the first motive and the first principle which has guided them, has not been one which, to say the least, ought to have been the last.

Now, on what ground was this Convention opposed, and voted against by those who did oppose and vote against it? For one, so far as I can judge from my own feelings, and from those with whom I am in the habit of acting, it was because it was a Convention which was wrung out of a party struggle, and that of necessity it must be a party Convention. And I ask gentlemen in the majority, in no unkind feeling, if there was not reason in those fears and apprehensions? I put it to some of the gentlemen who have been in the habit of acting in the majority, whether our apprehensions were wholly unreasonable? I would ask, if from the beginning to the end there has not been too much of this party element in our deliberations, and if the provisions of this Constitution, and especially the last and closing act of this eventful drama, have not been too much tinged by the ignoble desire of securing in the hands which now sway the destinies of the Commonwealth, those destinies? I would ask gentlemen if they have elevated their minds to the proper point of view from which to contemplate their duties and responsibilities? if they have been actuated by the single wish to provide that which was best for the people, best for the Commonwealth, best for the generation which is to come, and to put it forward to the people in such a manner as shall secure their deliberate action upon it, or whether they have been actuated by that other class of motives which I will no longer dwell upon. I put it to them, and let them find the answer in the silence of their own hearts.

Mr. BOUTWELL, for Berlin. I have no desire to dwell long upon some topics which have been introduced by the gentleman from Taunton, Mr. (Morton,) and by the gentleman from Boston (Mr. Hillard). This Convention, under an Act of the legislature, sustained by the people, assembled to revise the Constitution of this Commonwealth. I understand the gentleman from Taunton, and the gentleman from Boston, to protest against the conclusion of the business for which this assembly have convened, and coupled with that protest, they proceed, if not to impugn the motives of the gentlemen upon the other side, at least to approach to the very nearest point of imputation. Not for the purpose of thus arraigning each other have we assembled, and for my part, I desire not that the last moments of this Convention should be embittered by considerations of such a nature. I trust, Sir, unless I have deceived myself, I have read lectures to no man upon this floor. I came not here for that purpose, but to do my duty as a delegate of the people, acknowledging no responsibility to any associates here, but for the obligations which social life and the courtesies of our natures demand. To the people alone, are we responsible. That responsibility, I for one, take; its consequences I shall never shun. The majority of this Convention, as was their duty, have taken the responsibility; and if they go before the people and cannot defend their proceedings, they fall. If they can defend their proceedings here, whatever gentlemen upon this floor may say, their conduct will be sustained, and their proceedings will stand.

I desire, Sir, that instead of arraigning each other, we proceed to the conscientious discharge of the duties before us, that he who desires not to take the responsibilities of these last moments of this Convention, upon that record, shall escape the responsibility; but let him, in justice to his fellows, allow them to take the responsibility if they choose to do it. For one, I take what belongs to me.

It was for the purpose of expressing the opinions which I have, that I arose at this time. For one, I desire to enter into no criminations or recriminations. I have no doubt that errors have been committed by the majority. We do not claim to have been perfect here. Errors may have been committed by the minority, and it may be that the shield of public charity is as necessary for them as for us.

The question was then taken upon the motion offered by the gentleman from Taunton, (Mr. Morton,) and there were, on a division—ayes, 53; noes, 169.

So the motion did not prevail.

The question then recurring upon the final passage of the resolve numbered "one"——

Mr. WILKINSON, of Dedham, said: I suppose it may be proper now to offer an amendment, but which, in the present state of excitement in the House, I do not wish to take up the time of the Convention in discussing. It seems to me that the proposition should be distinctly passed upon by this Convention, whether the people shall have the right to pass upon these amendments separately. We have had a standing rule during the sitting of this Convention, by which any person might ask for a division of the question when susceptible of division, and we have voted upon these several propositions separately, and I am desirous to submit to the consideration of this Convention the propriety of allowing the people to do what we have done in this Convention. I would therefore move that the Report be recommitted to the Committee with instructions to report the several amendments agreed upon by this Convention, in such form, and with such reference to parts of the existing Constitution proposed to be altered or annulled, that each of said amendments may be separately submitted to the people for their adoption or rejection.

The PRESIDENT. The Chair would state that the motion is applicable only to the resolve numbered "one;" but it can be applied to each proposition as it comes up. The propositions were susceptible of division, and under a rule of the Convention the Chair must state the questions separately.

Mr. DANA, for Manchester. Before that question is put, I move to amend the first resolve so as to make it conform, in that part which refers to chapter eight, to the language of that title as we have amended it.

The question was taken and the motion was agreed to, and the resolve was amended accordingly.

The question recurring upon the motion of Mr. Wilkinson——

Mr. WILKINSON called for the yeas and nays upon it.

The yeas and nays were ordered, one-fifth of the persons voting having voted therefor, there being, on a division—ayes, 51; noes, 181.

The yeas and nays were then called upon the motion offered by Mr. Wilkinson, and there were —yeas, 73; nays, 170—as follows:—

YEAS.

| | |
|---|---|
| Adams, Benjamin P. | Barrows, Joseph |
| Aldrich, P. Emory | Beach, Erasmus D. |
| Aspinwall, William | Beebe, James M. |
| Bigelow, Jacob | Livermore, Isaac |
| Bradbury, Ebenezer | Lothrop, Samuel K. |
| Brewster, Osmyn | Marvin, Theophilus R. |
| Bullock, Rufus | Miller, Seth, Jr. |
| Carter, Timothy W. | Morey, George |
| Choate, Rufus | Morton, Marcus |
| Cogswell, Nathaniel | Oliver, Henry K. |
| Cole, Lansing J. | Orcutt, Nathan |
| Cook, Charles E. | Paige, James W. |
| Crockett, George W. | Parker, Adolphus G. |
| Crosby, Leander | Parker, Samuel D. |
| Davis, Solomon | Perkins, Daniel A. |
| Dennison, Hiram S. | Plunkett, William C. |
| Ely, Homer | Pomroy, Jeremiah |
| Eustis, William T. | Preston, Jonathan |
| Farwell, A. G. | Read, James |
| Gilbert, Wanton C. | Reed, Sampson |
| Giles, Joel | Sargent, John |
| Hale, Nathan | Sherman, Charles |
| Hammond, A. B. | Sleeper, John S. |
| Hathaway, Elnathan P. | Souther, John |
| Hawkes, Stephen E. | Stetson, Caleb |
| Hayward, George | Stevens, Charles G. |
| Hillard, George S. | Thompson, Charles |
| Hinsdale, William | Tileston, Edmund P. |
| Houghton, Samuel | Weeks, Cyrus |
| Hunt, William | Wetmore, Thomas |
| Jenkins, John | White, Benjamin |
| Jenks, Samuel H. | Wilder, Joel |
| Kellogg, Giles C. | Wilkinson, Ezra |
| Knight, Joseph | Williams, Henry |
| Ladd, John S. | Wilson, Milo |
| Lawton, Job G., Jr. | Wood, Nathaniel |
| Lincoln, Fred. W., Jr. | |

NAYS.

| | |
|---|---|
| Adams, Shubael P. | Chandler, Amariah |
| Allen, James B. | Chapin, Chester W. |
| Allen, Joel C. | Chapin, Daniel E. |
| Alley, John B. | Chapin, Henry |
| Allis, Josiah | Childs, Josiah |
| Alvord, D. W. | Clark, Salah |
| Baker, Hillel | Clarke, Alpheus B. |
| Ball, George S. | Cole, Sumner |
| Bancroft, Alpheus | Crane, George B. |
| Barrett, Marcus | Crittenden, Simeon |
| Bates, Moses, Jr. | Cross, Joseph W. |
| Beal, John | Cushman, Henry W. |
| Bird, Francis W. | Cushman, Thomas |
| Bishop, Henry W. | Dana, Richard H., Jr. |
| Booth, William S. | Davis, Isaac |
| Boutwell, George S. | Davis, Robert T. |
| Boutwell, Sewell | Dean, Silas |
| Breed, Hiram N. | Deming, Elijah S. |
| Bronson, Asa | Denton, Augustus |
| Brown, Adolphus F. | Dunham, Bradish |
| Brown, Hammond | Durgin, John M. |
| Brown, Hiram C. | Eames, Philip |
| Brownell, Frederick | Earle, John M. |
| Brownell, Joseph | Easland, Peter |
| Bryant, Patrick | Eaton, Calvin D. |
| Buck, Asahel | Edwards, Elisha |
| Bullen, Amos H. | Fay, Sullivan |
| Burlingame, Anson | Fellows, James K. |
| Butler, Benjamin F. | Fisk, Lyman |
| Caruthers, William | Foster, Aaron |
| Case, Isaac | Foster, Abram |

Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothirgham, R'd, Jr.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Hapgood, Seth
Harmon, Phineas
Haskins, William
Heath, Ezra, 2d
Hewes, William H.
Hobart, Henry
Hood, George
Howard, Martin
Hoyt, Henry K.
Hurlbut, Moses C.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Knight, Hiram
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Leland, Alden
Little, Otis
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Penniman, John
Perkins, Noah C.
Phinney, Sylvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rantoul, Robert
Rawson, Silas
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sanderson, Chester
Schouler, William
Sherril, John
Sikes, Chester
Simmons, Perez
Simonds, John W.
Smith, Matthew
Sprague, Melzar
Spooner, Samuel W.
Stevens, Granville
Stiles, Gideon
Strong, Alfred L.
Taft, Arnold
Tilton, Abraham
Tyler, William
Underwood, Orison
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Amasa
Waters, Asa H.
Weston, Gershom B.
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Otis
Wright, Ezekiel

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Allen, Parsons
Andrews, Robert
Appleton, William
Atwood, David C.
Austin, George
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Bumpus, Cephas C.
Cady, Henry
Churchill, J. McKean
Clark, Henry
Clark, Ransom
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Conkey, Ithamar
Cooledge, Henry F.
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilbur
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, John
Dawes, Henry L.
Day, Gilman
Dehon, William
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Joseph M.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hapgood, Lyman W.
Haskell, George
Hayden, Isaac
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James
Heywood, Levi
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Howland, Abraham H.
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hurlburt, Samuel A.
Hyde, Benjamin D.
Jackson, Samuel
James, William
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knowlton, Charles L.
Kuhn, George H.
Lawrence, Luther
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Meader, Reuben
Mixter, Samuel
Moore, James M.
Morss, Joseph B.
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Orne, Benjamin S.
Park, John G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Phelps, Charles
Prince, F. O.
Putnam, George
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sheldon, Luther
Stacy, Eben H.
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Swain, Alanson
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tilton, Horatio W.
Tower, Ephraim
Train, Charles R.

| | |
|---|---|
| Turner, David | Ward, Andrew H. |
| Turner, David P. | Warner, Marshal |
| Tyler, John S. | Warner, Samuel, Jr. |
| Upham, Charles W. | Wheeler, William F. |
| Upton, George B. | White, George |
| Viles, Joel | Wilbur, Joseph |
| Walcott, Samuel B. | Wilkins, John H. |
| Wales, Bradford L. | Wood, William H. |
| Walker, Samuel | Woods, Josiah B. |

Absent and not voting, 176.

So the motion was not agreed to.

Mr. OLIVER, of Lawrence. I do not suppose that any proposition which I could make, considering the condition which I occupy as one of the minority, will meet with any particular favor at the hands of the Convention, and yet I will venture to make one more motion. I have not any idea that any of the alkalies which have gone into the Constitution to neutralize the acids, will be removed; but I should like to take out that bantling of mine and let it ride alone; therefore I move that chapter eleven, in relation to the militia, be taken out from the *omnium-gatherum*, and made a separate proposition, number nine, so that it may be acted upon by the people separately.

Mr. SCHOULER, of Boston. I am sorry to see the gentleman from Lawrence making that motion at this late hour. I think that what is in the present Constitution in relation to the militia, is better than this bantling of the gentleman from Lawrence; and I said so when the matter was under discussion. But, inasmuch as it is in there, and inasmuch as the gentleman wants to get rid of it, I hope he will allow it to remain there. [Laughter.] Therefore, I am in favor of keeping it where it is. It is not so bad as I thought it was at first, and probably that is the reason that he wants to get it out.

Mr. SARGENT, of Cambridge. I hope the motion will succeed. I do not think much of this military law. It makes no provisions for Sergeants, and therefore, I hope it will be put by itself. [Laughter.]

The question was then taken on the motion of Mr. Oliver, and it was decided in the negative.

Mr. MASON, of Fitchburg. I find that in the latter part of article first, chapter second, there is the word "be" before the word "chosen" which seems to be superfluous. The clause now reads as follows:—

Each district shall be entitled to elect one senator, who shall have been an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is be chosen.

I move to strike out the word "be."

The question was taken and the motion was agreed to.

Mr. MASON. I also move to insert the words "to be" before the word "entitled" in article two, chapter six, which is as follows:—

ART. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.

Mr. HALLETT. In my judgment the amendment weakens rather than strengthens the language. It now declares that they are entitled, and the amendment says they are *to be* entitled. When? That language was well considered, is in conformity to the old Constitution, and is good Saxon English.

Mr. MASON. I withdraw the amendment.

The PRESIDENT. The question recurs upon the final passage of proposition numbered "one."

Mr. BOUTWELL. This being the final disposition of that proposition, I ask the yeas and nays upon its passage.

The yeas and nays were ordered.

The roll was then called and there were—yeas, 173; nays, 58—as follows:—

YEAS.

| | |
|---|---|
| Allen, James B. | Butler, Benjamin F. |
| Allen, Joel C. | Carruthers, William |
| Alley, John B. | Case, Isaac |
| Allis, Josiah | Chandler, Amariah |
| Alvord, D. W. | Chapin, Chester W. |
| Austin, George | Chapin, Daniel E. |
| Baker, Hillel | Chapin, Henry |
| Ball, George S. | Childs, Josiah |
| Bancroft, Alpheus | Clark, Ransom |
| Barrett, Marcus | Clark, Salah |
| Bates, Moses, Jr. | Clarke, Alpheus B. |
| Beach, Erasmus D. | Cole, Lansing J. |
| Beal, John | Cole, Sumner |
| Bird, Francis W. | Crane, George B. |
| Bishop, Henry W. | Crittenden, Simeon |
| Booth, William S. | Cross, Joseph W. |
| Boutwell, George S. | Cushman, Henry W. |
| Boutwell, Sewell | Dana, Richard H., Jr. |
| Breed, Hiram N. | Davis, Isaac |
| Bronson, Asa | Davis, Robert T. |
| Brown, Adolphus F. | Dean, Silas |
| Brown, Hammond | Denton, Augustus |
| Brown, Hiram C. | Dunham, Bradish |
| Brownell, Frederick | Durgin, John M. |
| Brownell, Joseph | Eames, Philip |
| Bryant, Patrick | Earle, John M. |
| Bullen, Amos H. | Easland, Peter |
| Burlingame, Anson | Eaton, Calvin D. |

Edwards, Elisha
Fay, Sullivan
Fellows, James K.
Fisk, Lyman
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Rodney
French, Samuel
Frothingham, R., Jr.
Gardner, Johnson
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Graves, John W.
Green, Jabez
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Hapgood, Seth
Harmon, Phineas
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, William H.
Hobart, Henry
Hood, George
Howland, Abraham H.
Hoyt, Henry K.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jacobs, John
Kendall, Isaac
Knight, Hiram
Knight, Joseph
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Langdon, Wilber C.
Lawton, Job G., Jr.
Leland, Alden
Little, Otis
Marble, William P.
Mason, Charles
Merritt, Simeon
Monroe, James L.
Morton, Elbridge G.
Morton, Marcus, Jr.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Nute, Andrew T.
Osgood, Charles
Packer, E. Wing
Paine, Benjamin
Paine, Henry
Parris, Jonathan
Partridge, John
Penniman, John
Perkins, Daniel A.
Perkins, Noah C.
Phinney, Silvanus B.
Pierce, Henry
Pool, James M.
Powers, Peter
Putnam, John A.
Rantoul, Robert
Rice, David
Richards, Luther
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Ring, Elkanah, Jr.
Rogers, John
Ross, David S.
Royce, James C.
Sanderson, Amasa
Sherril, John
Simmons, Perez
Simonds, John W.
Smith, Matthew
Spooner, Samuel W.
Stevens, Granville
Stiles, Gideon
Strong, Alfred L.
Taft, Arnold
Tilton, Abraham
Tyler, William
Underwood, Orison
Vinton, George A.
Wallace, Frederick, T.
Wallis, Freeland
Walker, Amasa
Waters, Asa H.
Weston, Gershom B.
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Daniel
Williams, J. B.
Wilson, Henry
Wilson, Willard
Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Adams, Benjamin P.
Aldrich, P. Emory
Aspinwall, William
Barrows, Joseph
Bartlett, Russel
Beebe, James M.
Bigelow, Jacob
Bradbury, Ebenezer
Brewster, Osymn
Carter, Timothy W.
Choate, Rufus
Crockett, George W.
Crosby, Leander
Davis, Solomon
Denison, Hiram S.
Ely, Homer
Farwell, A. G.
Gilbert, Wanton C.
Giles, Joel
Hale, Nathan
Hammond, A. B.
Hayward, George
Hillard, George S.
Hinsdale, William
Houghton, Samuel
Hunt, William
Hurlburt, Samuel A.
Jenkins, John
Jenks, Samuel H.
Kellogg, Giles C.
Ladd, John S.
Lincoln, Frederic W., Jr.
Livermore, Isaac
Lothrop, Samuel K.
Marvin, Theophilus R.
Miller, Seth, Jr.
Morey, George
Morton, Marcus
Oliver, Henry K.
Orcutt, Nathan
Paige, James W.
Parker, Adolphus G.
Plunkett, William C.
Preston, Jonathan
Read, James
Reed, Sampson
Sargent, John
Sikes, Chester
Sleeper, John S.
Souther, John
Stevens, Charles G.
Tileston, Edmund P.
Weeks, Cyrus
White, Benjamin
Wilder, Joel
Wilkinson, Ezra
Williams, Henry
Wilson, Milo

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Shubael P.
Allen, Charles
Allen, Parsons
Andrews, Robert
Appleton, William
Atwood, David C.
Ayres, Samuel
Ballard, Alvah
Banks, Nathaniel P., Jr.
Bartlett, Sidney
Bates, Eliakim A.
Bell, Luther V.
Bennett, William, Jr.
Bennett, Zephaniah
Bigelow, Edward B.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brinley, Francis
Briggs, George N.
Brown, Alpheus R.
Brown, Artemas
Buck, Asahel
Bullock, Rufus
Bumpus, Cephas C.
Cady, Henry
Churchill, J. McKean
Clark, Henry
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cogswell, Nathaniel
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Cressy, Oliver S.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Thomas
Cutler, Simeon N.
Davis, Charles G.
Davis, Ebenezer
Davis, John
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Easton, James, 2d
Eaton, Lilley
Edwards, Samuel
Ely, Joseph M.
Eustis, William T.
Fiske, Emery
Fitch, Ezekiel W.
Fowler, Samuel P.
French, Charles H.
Gale, Luther
Gardner, Henry J.
Gooch, Daniel W.
Gould, Robert
Goulding, Dalton
Goulding, Jason
Gray, John C.
Greenleaf, Simon
Hale, Artemas
Hapgood, Lyman W.
Haskell, George
Haskins, William
Hazewell, C. C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, James

Heywood, Levi
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Howard, Martin
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Jackson, Samuel
James, William
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kingman, Joseph
Kinsman, Henry W.
Knight, Jefferson
Knowlton, Charles L.
Kuhn, George H.
Lawrence, Luther
Lincoln, Abishai
Littlefield, Tristram
Loomis, E. Justin
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marcy, Laban
Marvin, Abijah P.
Meader, Reuben
Mixter, Samuel
Moore, James M.
Morss, Joseph B.
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Ober, Joseph E.
Orne, Benjamin S.
Park, John G.
Parker, Joel
Parker, Samuel D.
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Phelps, Charles
Pomroy, Jeremiah
Prince, F. O.
Putnam, George
Rawson, Silas
Rockwell, Julius
Rockwood, Joseph M.
Sampson, George R.
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherman, Charles
Sprague, Melzar
Stacy, Eben H.
Stetson, Caleb
Stevens, Joseph L., Jr.
Stevens, William
Stevenson, J. Thomas
Storrow, Charles S.
Stutson, William
Sumner, Increase
Sumner, Charles
Swain, Alanson
Taber, Isaac C.
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Thompson, Charles
Tilton, Horatio W.
Tower, Ephraim
Train, C. R.
Turner, David
Turner, David P.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Viles, Joel
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Ward, Andrew H.
Warner, Marshal
Warner, Samuel, Jr.
Wetmore, Thomas
Wheeler, William F.
Wilbur, Joseph
Wilkins, John H.
Wood, William H.
Woods, Josiah B.

Absent, and not voting, 188.

So proposition numbered "one" was passed.

Pending the call——

Mr. COLE, of Cheshire, asked the indulgence of the Convention to explain the reasons for the vote which he gave.

[Many voices. "No!" "No!" "No!"]

The PRESIDENT decided that leave could be granted only by unanimous consent.

The first proposition having thus been disposed of, the Secretary read the second proposition and the provision of the Constitution to which it referred, as follows:—

II. The provision respecting the granting of the writ of Habeas Corpus, as a proposition, numbered "two."

If this proposition be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

The following is the provision referred to:—

The writ of *habeas corpus* shall be granted as of right in all cases in which a discretion is not especially conferred upon the court by the legislature; but the legislature may prescribe forms of proceeding preliminary to the obtaining of the writ.

The question was taken upon the final passage of the second proposition, and there were, upon a division—ayes, 169; noes, 17.

So the proposition was passed.

The third proposition was next read, as follows:—

III. The provision respecting the rights of juries in criminal trials, as a proposition, numbered "three."

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

The following is the provision referred to:—

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

The question being upon the passage of the third proposition it was put, and there were—ayes, 149; noes, 56.

So the proposition was passed.

The fourth proposition was then read, as follows:—

IV. The provision respecting claims against the Commonwealth, as a proposition, numbered "four."

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

Proposition numbered "four," is as follows:—

Every person having a claim against the Commonwealth, ought to have a judicial remedy therefor.

The question was then taken upon the passage

of the fourth proposition, and there were—ayes, 183; noes, 6.

So the proposition was passed.

The fifth proposition was then read, as follows:—

V. The provision respecting imprisonment for debt, as a proposition, numbered "five."

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights, respecting excessive bail and fines.

The provision referred to, is as follows:—

No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

The question was taken upon the passage of the fifth proposition, and there were—ayes, 153; noes, 16.

So the proposition was passed.

The sixth proposition was then read, as follows:—

VI. The provision respecting sectarian schools, as a proposition, numbered "six."

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, "The University at Cambridge, The School Fund, and The Encouragement of Literature." If proposition numbered "one" shall not be adopted, it shall be added as an amendment to the Constitution.

The provision referred to, is 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.

Mr. DANA. Before the question is taken upon the passage of the sixth proposition, I move to amend it by striking out the word "it" in the last clause, and inserting in lieu thereof, the words, "number six."

The question was taken, and the motion was agreed to.

Mr. HALLETT. I ask for the yeas and nays upon the passage of the sixth proposition.

The yeas and nays were not ordered, one-fifth of those voting, not voting therefor.

The question was then taken upon the passage of the sixth proposition, and there were, upon a division—ayes, 159; noes, 24.

So the proposition was passed.

The PRESIDENT. The next proposition is in the following words:—

VII. The Legislature shall not create corporations by special act, when the object of the incorporation is attainable by general laws.

This proposition was adopted, without debate, on a division—ayes, 169; noes, 16.

The PRESIDENT. The next business before the Convention is the eighth proposition.

The Secretary read the following, previous to reading the proposition:—

VIII. The provision respecting Banks and Banking, as a proposition, numbered "eight."

If the propositions numbered "seven" and "eight" be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled "Miscellaneous Provisions."

If proposition numbered "one" be not ratified and confirmed, they shall be added as amendments to the Constitution."

The eighth proposition was then read, as follows:—

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes, in specie.

The proposition was adopted, on a division—ayes, 153; noes, 36.

The question next recurred upon the second resolution, which was read, as follows:—

*Resolved*, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be holden on the second Monday of November, in the year one thousand eight hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within sealed envelopes, according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded, in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities,

shall be sealed up by said selectmen and mayor and aldermen, and directed to the Secretary of the Commonwealth, with a superscription expressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the secretary's office, on or before the day last aforesaid.

The resolve was agreed to.

The question next recurred upon the third resolution, which was read, as follows:—

*Resolved*, That the Secretary shall deliver said copies, so transmitted to him, to a Committee of this Convention, consisting of

who shall assemble at the State House, on the third Monday of December next, and open the same, and examine and count the votes so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

Mr. DANA moved to amend the resolution, by providing that the blank be filled with the name of the President of the Convention, and the names of twenty other persons, whom he should nominate.

The amendment was agreed to, and the question recurring on the passage of the resolve, as amended,

The resolve was passed.

The question then recurred upon the fourth resolution, which was read, as follows:—

*Resolved*, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter may vote on each proposition, by its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition, the word Yes or No; but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

*Constitutional Propositions.*

| | |
|---|---|
| Proposition No. I., . . | Yes or No. |
| Proposition No. II., . . | Yes or No. |
| Proposition No. III., . . | Yes or No. |
| And to Proposition No. VIII., | Yes or No. |

Mr. FROTHINGHAM, of Charlestown. I have an amendment to propose to this resolve; and without questioning the eminent ability which has marked the course of the Committee in reference to preparing their Report and doing full justice to it, I yet think there may be an amendment here which will perhaps relieve the voters of considerable trouble at the polls. The proposition as it now stands, states that

Every voter may vote on each proposition by its appropriate number, without specifying in his ballot any reference to the subject of the proposition, and by writing opposite to the number of each proposition the word Yes or No; but the vote on all of the propositions shall be written or printed on one ballot, in substance as follows:—

*Constitutional Propositions.*

| | |
|---|---|
| Proposition No. I., . . | Yes or No. |
| Proposition No. II., . . | Yes or No. |
| Proposition No. III., . . | Yes or No. |
| And to Proposition No. VIII., | Yes or No. |

Now, it seems to me that the ballot ought to specify each proposition. These pamphlets which we shall send out will, in all probability, be lost before the people come to the polls; and when they are there the inquiry will be: "What does number one mean? what does number two mean? or what does number three mean?" throughout the whole propositions. And then again the object is to prepare the ballot; and, after all, the ballot will not be specific. With these few remarks, I submit the following amendment, which is to strike out all after the word "whole," in the second line, and insert the following:—

Indicating on his ballot the subject of the proposition, and writing or printing the word Yes or No opposite to each proposition.

Mr. KNOWLTON, of Worcester. As a member of the Committee on Revision, I give the amendment of the gentleman from Charlestown my support. I think it is plainer than the proposition of the Committee, and I hope it will be adopted.

Mr. DANA, for Manchester. I was about to suggest, when I yielded the floor to the gentleman for Wilbraham, that it seems to me the proposition of the gentleman from Charlestown is a very proper one, and better than that which we had submitted; because, if the propositions were only designated by numbers, a mistake in those numbers, either from accident or design, would frustrate the intentions of the voters; but if we have both the number and the indication of the subject, there could be scarcely a possibility of

mistake. The amendment was submitted by the gentleman from Charlestown to the chairman of the Committee, and to some other members, before he offered it, and I believe it met with general approbation. Perhaps it would be more grammatical to say "in" than to say "and." When a man votes, I do not suppose that any inquiry will be made as to whether he wrote his ballot, or whether his wife wrote it for him at home, or whether it was printed.

Mr. HALLETT, for Wilbraham. It is just as easy to express it in language that every-body will understand, as it is to express it in doubtful language. If the word "in" will perfect the language, I move to substitute "in" instead of "and," so that it shall read: "indicating on his ballot the subject of the proposition in writing or printing, opposite each proposition."

Mr. EARLE, of Worcester. It appears to me, that it is very well as it is; and in answer to the objection which has been raised by the gentleman for Manchester and the gentleman for Wilbraham, I can say that I do not suppose there will be any difficulty about this matter. It is not presumed that the voters are going to the polls, and to sit down and write their ballots when they vote. Unquestionably these propositions will all be printed—one set with yeas and another set with nays opposite to each proposition; and then each voter could select that which corresponds the nearest to the way he wishes to vote, and alter it to suit himself. If he votes "yes" on the majority of the propositions, and there are two or three which he does not like, he can take his pencil and mark "no" opposite to them, erasing the word "yes." I am in favor of the amendment as it now stands; I think there will be no difficulty arising from it.

Mr. JENKS, of Boston. This seems to me to be merely a verbal dispute. It stands very well as the gentleman for Wilbraham proposes it, and it is much more plain and explicit. I presume the meaning is, that each voter shall state by a written or printed declaration; and perhaps that would be a good form in which to express it, instead of saying that he shall either write or print it.

Mr. HALLETT. I should be sorry to have this go out in a wrong form; and I will farther suggest that the word "stating" be substituted for "indicating," so that it will read as follows:

And every voter shall vote on each proposition by its appropriate number, stating on his ballot the subject of the proposition, in writing or printing, and the word yes or no opposite to each proposition.

The question being then taken on the amendment to the amendment, it was agreed to; and the amendment, as amended, was then adopted.

The resolve, as amended, was then agreed to.

The question was then stated on agreeing to the fifth resolve:—

*Resolved*, That a printed copy of these resolutions, with the several constitutional propositions annexed, shall be attested by the Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

Mr. BOUTWELL moved to amend by inserting after the words "attested by," the words "the President and," so that it would read "shall be attested by the President and Secretaries of the Convention," &c.

The amendment was agreed to.

Mr. STETSON, of Braintree. I should like to ask the chairman of the Committee, if it is intended that the same plan shall be pursued in the printing of the Constitution, which is pursued in the printing of these copies that have been distributed here. A part of this Constitution is set in open type, a part in close type, and a part in Italics. What I want is this: that in order that the people may understand what part of the Constitution is new and what part is old, it should be printed with all that is new inserted in Italics, and the old part in Roman. In that case, when it goes out to the people, they will not have to study and compare in order to find out what changes the Convention have made. I move that the Committee who have this matter in charge, direct all the new portion to be printed in Italics.

Mr. BUTLER, of Lowell. I wish to inform the gentleman from Braintree, that the new parts are already differently printed from the old, so that they can be very well distinguished. However that may be, I had supposed that it was no part of the duty of the Committee on Revision to superintend the printing.

Mr. MARVIN, of Boston. I think some plan should be adopted to carry out the view of the gentleman from Braintree—either that which he has suggested, or, perhaps it may be well to have the new portions of the Constitution enclosed in brackets, as is frequently done in such cases. Every man who knows anything about printing, will agree with me in the opinion, that three-quarters of the men in the Commonwealth would not readily discern the difference between solid and leaded matter—I speak as a practical printer. I think there should be some obvious distinction

to the eye between what is new and what is old.

Mr. EARLE. These suggestions may all be very well, but I think we had better leave this to be attended to by the Committee, and not take any action on it now.

Mr. BUTLER. I beg leave to make a single suggestion farther. I think those gentlemen who have been instructing us so long, how much the people are to be trusted, and throwing brickbats at us for not trusting them, are putting themselves to unnecessary trouble in inserting brackets and Italics in order that the people may know what this Convention have been doing. I have no fear but that the people can find out where the changes are, without having them put in Italics. I believe in the people enough for that.

The question being taken, the resolve was agreed to.

Mr. MARVIN. I move to instruct the Committee, whose duty it is to provide for printing the resolutions, that the several propositions annexed, which are new portions of the Constitution, be printed in brackets.

Mr. STETSON. I trust that this Convention will adopt the motion of the gentleman from Boston, for this reason. I will venture to say that no member of this Convention can tell in two hours, what part of this revised Constitution is old and what part is new; and I believe, that without any orders, the Committee who have had this Constitution under revision, have made some changes in regard to matters which have never been under consideration by this Convention at all. I think the people have a right to know what portion of the Constitution which is sent out to them for their sanction is new and what portion is not; and they never will know if they have it printed in the way that this is.

Mr. WHITNEY, of Boylston, (interposing). I understood the gentleman to say, that no member could find out in two hours what was new and what was old. I wish to inquire if he is going to make a statement to occupy that length of time, in order that we can try the experiment. [Laughter.]

Mr. STETSON. I can assure the gentleman in the gallery that he has never seen me asleep in this Convention, and he probably will not. I take it, Mr. President, that the people have a right to know precisely what alterations have been made in the Constitution which we send out to them, before they vote for its adoption. I think, therefore, that it is no more than proper, in sending out a proposition of so much importance as a new Constitution, that the people should know how to distinguish between that which is new and that which is old. I trust, Mr. President, that this Convention will pass the resolution of the gentleman from Boston, unless they mean to deceive the people by putting a proposition before them which they know that they cannot understand. I do not want to throw bricks at a man's head, or brick dust into his eyes so that he cannot see. All that I ask is that the proposition may go forth to the people in such a shape and manner that they can understand it. I think that if it should be printed in the form in which this has been printed for us here, there is not one man in ten that could tell what he was voting on—whether a particular proposition was a part of the old Constitution or whether it was something new. I believe that the people of Massachusetts are as well enlightened, and understand their rights as well as the people of any other State in this Union. There is not a State which has a more enlightened constituency than we have in this Commonwealth; but, Sir, I believe, notwithstanding that they are so intelligent they would be apt to get puzzled with this document, printed in this way; for it requires a very astute man to understand all that is new and all that is old in this Constitution.

Mr. DANA, for Manchester. It is proposed, as I understand it, that all the new parts of the Constitution submitted to the people, shall be printed in brackets to distinguish them from the old Constitution. Now there will be one great difficulty in that. Some amendments are merely in the way of transposing words, some where the same substance remains with very little variation of form. The Committee found it necessary to adopt three modes of printing—common type, leaded type, and brackets. I do not believe it possible that by mere brackets amendments can be sufficiently distinguished so as not to mislead the people.

Another difficulty. If it shall be issued in the form of brackets, we shall be held responsible for their accuracy, for the people will rely upon them. I should not like to trust to the accuracy with which any person could do that work. It would be a matter of difference of opinion what should be placed in brackets, and how. I do not think the gentleman from Braintree, (Mr. Stetson,) really thinks the people have an inalienable right to brackets. Will he permit me to ask him whether it would not suit him to have a part in crotchets? [Laughter.]

Mr. KNOWLTON, of Worcester. I think the proposition is susceptible of improvement. I therefore move to strike out all after the word "brackets," and insert in lieu thereof the words "in such form as to distinguish, as far as possible,

the amendments from the text of the Constitution."

Mr. MARVIN, of Boston. I accept the amendment. I take it that if the main amendments, that is those which are entire paragraphs, are put in brackets, and the less important alterations are put in Italics, the amendments would be perfectly obvious to every-body. I trust that the Committee will take that course.

The question was then taken upon the motion of Mr. Marvin, as modified by the motion of Mr. Knowlton, and it was decided in the affirmative.

Mr. HATHAWAY, of Freetown. I desire to call the attention of the Committee which reported these resolutions, to the proposition made here in reference to article second, chapter first, which is as follows:—

ART. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the governor.

The last paragraph of that article was passed over for the purpose of giving the Committee time to make an examination of that matter, and giving an answer to the inquiry which was made in reference to it, and that was, whether the Convention had passed upon that very proposition, and agreed to have it stricken out. I should like to know whether the Committee have satisfied themselves in reference to that matter? Can the Committee answer now, whether the Convention have acted upon it, and whether they have struck it out or retained it?

Mr. BOUTWELL, for Berlin. The Convention have not passed upon it. It stands as it ever has in the articles of amendment to the old Constitution. It was struck out of the original Constitution of 1780, but, by a provision inserted with great care in the amendments, and which annulled a part of the article with which this provision was connected, and this provision was preserved, and has not been acted upon by the Convention. There is nothing upon the record which shows that it has been acted upon.

Mr. LIVERMORE, of Cambridge. A part of the same words were struck out by a Report of the Committee on the Frame of Government, or at least they left out that part of it. The Report was to substitute something for the article as it then stood, and the part relating to the governor having the power to call the legislature together, was not stricken out. But the whole has been inserted into this article, after the old article had been amended, by striking out a part, and a new article substituted for it. It was left out, but the Revising Committee found it in another part of the Constitution, and put it in here.

The PRESIDENT. It can only be reached by a motion to reconsider.

Mr. LIVERMORE. I shall not make a motion in regard to it.

Mr. BOUTWELL. The Committee on the Frame of Government made no reference whatever to that provision in the Constitution in which this clause was found. No reference whatever.

The PRESIDENT. It appears that no amendment has been made in reference to this matter.

Mr. BOUTWELL. The Committee on the subject of Revising the Amendments to the Constitution, were also charged with the matter of preparing an Address to the people of the Commonwealth; and, with the consent of the Chair, and of the Convention, I will read the Address which the Committee has instructed me to report.

The Convention of Delegates, assembled by your authority, and directed to revise the Constitution of the Commonwealth, has now closed its labors; and it seeks only to commend and commit the result to your consideration and final judgment. The necessity for the Convention was great, and its labors have been arduous and protracted. As your delegates, we have sought for the principles of freedom in the ancient institutions of the State; but we have thought it wise also to accept the teachings and experience of nearly a century of independent existence. It has then been our purpose to unite in one system of organic law the principles of American republican institutions, and the experiences of other free States, all contemplated in the light derived from the history and usages of Massachusetts.

And first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments, much of the original text is already annulled, and it is only by a careful and critical analysis and comparison that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed—"that every man may at all times find his security in them." We have not, then, thought it wise, or even proper, to preserve, as a part of the Constitution, provisions which have long since been annulled; nor do we feel justified in proposing new specific amendments whose adoption will render the fundamental law of the Commonwealth more difficult to be understood and less certain in its requirements.

We have, therefore, taken what remains unchanged of the Constitution of 1780, and the

subsequent amendments, preserving the original language wherever it appeared practicable, as the basis of a new Constitution, and incorporated therewith such of the resolutions of this Convention as are necessary to give to the whole, at once, a comprehensive and concise character. This has been our purpose; and if our view of duty is correct, we are entirely justified in submitting so much of our work as will give to the people of Massachusetts a complete system of organic law, as one proposition, for your adoption and ratification. It is undoubtedly true, that when amendments are specific and not numerous, they should be separately submitted to the judgment of the people; but this mode becomes impracticable in the formation of a new government, or the thorough revision of an old one. Our attention has been necessarily directed to every provision of the Constitution, and but one chapter is preserved in its original form. It only remained for us either to submit our work, to be added to the old Constitution as specific amendments, with the conviction that their ratification would render your form of government more complicated than it now is, or else to embody all of the old and new that appears necessary to the safe and harmonious action of the system, and present it as "the Constitution of Massachusetts."

This we now do, and we invite you to consider that, while government is essential to the safety and happiness of each individual, it must necessarily happen that it cannot be in every part alike acceptable to all. "We may not expect," said the founders of the Commonwealth, "to agree in a perfect system of government; this is not the lot of mankind. The great end of government is to promote the supreme good of human society." We commend the new Constitution to you, not as being perfect, but as greatly to be preferred to the existing frame of government. It declares the rights and liberties essential to the freedom of the people; it contains, as we believe, a framework arranged according to reason and correct analogies, and it embodies all the fundamental provisions necessary to a just administration of every department of the government.

You will naturally examine with care the character of the changes we have proposed. We have thought it necessary to make a provision for the purpose of limiting the sessions of the General Court to one hundred days, and to require that the pay of its members shall be fixed by standing laws.

At present the members of the Senate are chosen by the several counties which elect from one to six senators, upon a general ticket. We have provided for the division of the State into forty districts, of equal population, and each entitled to elect one senator.

The basis of the House of Representatives has been a subject of careful and anxious deliberation. Differences of opinion existed among us; but a majority of more than one hundred members determined to preserve the system of town representation, under which Massachusetts has existed so long and prospered so well. We have, then, based the House of Representatives upon the municipal institutions of the State, having reference, so far as practicable, to their relative population. By the proposed system, towns containing less than one thousand inhabitants are entitled to elect a representative for the year when the valuation of estates is settled, and one in addition, annually, for five years out of every decennial period. Towns having a population of one thousand and not more than four thousand inhabitants, are entitled to elect a representative every year; towns of more than four thousand and less than eight thousand, will elect two representatives; towns of eight thousand and less than twelve thousand, will elect three representatives, while towns and cities of twelve thousand inhabitants, will elect four representatives, and one additional representative for each addition of four thousand to their population. We do not claim that this system, separately considered, is precisely equal; but if it is in some degree favorable to the rural districts, the loss sustained by the large towns and cities is in a fair measure compensated by the manifest advantages accorded to them in the constitution of the Council and the Senate. The inequality of representation between particular towns, when tested solely by population, may in some cases apparently be great; but when the rights of different interests and different sections of the Commonwealth are considered in connection with the whole system of elective government, the basis of the House cannot be deemed unequal or unjust. The Senate and Council are based upon population rather than voters, by which the inhabitants of the cities and large towns have influence in these two important departments of the government quite disproportionate to their just elective power.

No human government can attain to theoretic accuracy; and in a state where pursuits, habits, and interests are various, it certainly is not the part of wisdom to place unlimited power in the hands of any. We invite you to consider that the Governor represents the voters of the State; that the Council and Senate represent population, without any reference to voters, and as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and finally, that we have sought only to secure to the several districts and to the agricultural and mechanical population and interests a reasonable share of power in one branch of the Legislature. This influence gives to this portion of the people power to assent to, but never to dictate, the policy of the government. The Convention of 1780 declared that "an exact representation would be impracticable even in a system of government arising from the state of nature, and much more so in a State already divided into nearly three hundred corporations." We have encountered the same difficulty, and hope that we have overcome it in our day as well as they overcame it in their day.

But our deliberations have not been confined to the proposed system. Many of your delegates are of opinion that the State should be divided into districts for the election of representatives, according to the number of voters in each. In this opinion a large majority of the Convention do not concur; but we think it our duty first to

interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance whenever such a course is practicable. We have, therefore, made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then substituted for the one recommended by the Convention, if, in the judgment of the whole people, it is wise to make the change.

We have also provided that the cities and large towns shall be so districted for the choice of representatives that no district shall be entitled to elect more than three members. In the judgment of the Convention the election of many officers on a single general ticket is not compatible with the freedom and purity of the representative system.

The property qualification of the Governor and Lieutenant-Governor has been abolished.

The Council has been made elective by the people in single districts, and the records of that body are hereafter to be subject to public examination.

We have provided that the Attorney-General, the Secretary of the Commonwealth, the Auditor and the Treasurer, officers now appointed by the Governor, or chosen by the Legislature, shall hereafter be elected annually by the people; and that the Judges of Probate, Registers of Probate, Sheriffs, Clerks of the Courts, Commissioners of Insolvency, and District-Attorneys, officers now appointed by the Executive or the Courts, shall also be elected by the people for terms of three years.

We have also provided that the Justices of the Supreme Judicial Court and of the Court of Common Pleas, hereafter appointed, shall hold their offices for the term of ten years. In a free government, the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution a Judge can only be removed by the difficult and unpleasant process of impeachment, or of address. Such remedies will be resorted to only in the most aggravated cases. Under the proposed system we have no apprehension but that faithful and competent Judges will be retained in the public service; while those whose places can be better filled with other men, will retire to private life without violence or ungracious circumstances, and scarcely with observation.

It is proposed that Justices of the Peace shall be divided into two classes. Those whose duties are chiefly ministerial, will be, as heretofore, appointed by the Governor and Council; while those intrusted with judicial authority are to be elected by the people and to hold by a tenure of three years.

Under the original Constitution, voters and public officers were required to possess property qualifications. These have heretofore been removed in part, and we now recommend the entire abolition of the property qualification in the voter for all national and all state officers mentioned in the Constitution. The obligations of citizens to contribute to the public expenses by assessment of taxes are not in any degree changed.

Provision is also made for the secrecy of the ballot. By the ballot the citizen at the same time declares his opinion on public affairs, and asserts his equality with every other citizen.

Freedom of opinion, and freedom in the expression of opinion, are individual rights, to be limited or controlled only by a public necessity. We see no public necessity which ought to deprive the citizen of these rights, and we have therefore made provision for their protection.

We also provide, absolutely, that in many elections, persons having the highest number of votes shall be chosen. This rule has been applied principally to the elections in counties and districts, where the trouble of frequent trials is great. The Governor, Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, Treasurer, Auditor, Representatives to the General Court, and town officers, are exceptions to the rule. In case of a failure to elect either of the first six named, the election is referred to the General Court; while subsequent trials may be had for the choice of Representatives and municipal officers. We have, therefore, as we think, retained the majority rule where its application will be least burdensome to the people. At the same time we have provided that the Legislature may substitute the plurality rule whenever the public will shall demand it, with a condition that no act for that purpose shall take effect until one year after its passage. Thus we have given an opportunity to test the wisdom of the plurality system, by experience, and power to apply it to every popular election in the Commonwealth, whenever the deliberate judgment of the people shall require it.

The various provisions relating to the militia have been revised, some important changes have been made, and that department of the government will rest more firmly than ever on a constitutional basis.

Changes are proposed concerning the University at Cambridge, and the General Court is instructed to take means for the enlargement of the school fund, until it shall amount to a sum not less than two millions of dollars.

Although the Constitution has always asserted, in the strongest terms, the right of the people, at all times, to alter, reform, or totally change their frame of government, yet it has been contended by some, that the operation and effect of the specific provisions for amendments, contained therein, have been such as practically to impair or render doubtful this great right. We have, therefore, thought it wise, while we recognize and retain the modes of exercising the right practised hitherto in this Commonwealth, to introduce additional provisions, to meet possible future exigencies, and to enable the people, without controversy, to hold periodical Conventions that shall not be subject to, or restricted by, any previous or subsequent act of the Legislature.

Trusting that you will examine with care the proceedings of the Convention, and the result to which it has come, we deem it unnecessary to

explain several less prominent changes proposed in the Constitution of the Commonwealth.

We also submit seven distinct amendments, which are presented separately for your ratification. Some of them are new, and all of them are independent of the frame-work of the government, and may either be adopted or rejected without disturbing the system or harmony of the Constitution. They have all, however, been sustained by decisive majorities of your delegates, and embrace important essential principles in popular government. The formation or the revision of a popular constitution is an epoch in the history of a free people.

We are sensible of the magnitude of the trust which you have confided to us, but it is not more important than the just decision of the question which we submit to you. We have no doubt that your decision will secure a result beneficial to Massachusetts, and, under Divine Providence, will render more and more illustrious our ancient Commonwealth.

The question was then taken upon adopting the Address, and it was agreed to without a division.

Mr. HALLETT, for Wilbraham. I move that the Address which has been read and accepted by the Convention, be signed by the President and Secretary of the Convention, and published.

Mr. BUTLER, of Lowell. Will the gentleman for Wilbraham allow me to suggest an amendment to his motion. In addition to the printing, I suggest that the same number be printed as we have ordered of the Revised Constitution, and that it be circulated among the people—that is 100,000 copies—and bound with them.

Mr. HALLETT. I presume the Address, under that resolution, would be published in connection with the Constitution.

Mr. BIRD, of Walpole. I will read an order which I have drawn up, which covers that matter, and also another matter :—

*Ordered*, That the Resolves contained in document No. 128, and the Address to the People, signed by the President and the Secretary, be printed in connection with copies of the Revised Constitution ordered to be printed for distribution; and that 35,000 additional copies of said Constitution, with the Resolves and Address, be printed for distribution in accordance with orders already adopted.

The latter clause of the order is a distinct subject, and it is for this reason, that since the passage of the resolve ordering the printing of 100,000 copies, we learn that last winter the legislature ordered the printing of 100,000 copies of the old Constitution, and it was found by them, after distributing the 100,000 copies, they were 35,000 copies short, and they were obliged to order that number of copies more, costing about as much as the original edition of 100,000 copies. It was thought best, therefore, to order that the same number of the new Constitution should be printed. It will be cheaper to do so now than hereafter.

Mr. WEEKS, of Harwich. Where did the gentleman get his information.

Mr. BIRD. From the printer, the sergeant-at-arms, and others.

Mr. WEEKS. I had the honor to offer the resolution myself, and it provided for 30,000 copies.

Mr. BIRD. Then there were 130,000 copies, in all, ordered.

The PRESIDENT. The Chair would suggest that the question can be first taken upon signing the Address, and then upon the other matter.

Mr. HALLETT, for Wilbraham. I so modify my motion.

The question was then taken upon Mr. Hallett's motion, and it was agreed to.

The question was then taken upon the motion offered by Mr. Bird, and it was decided in the affirmative.

So the motion was agreed to.

*Pay Roll.*

Mr. CUSHMAN, of Bernardston. I now move that the resolve for the payment of members be taken from the table and acted upon.

The question was taken, and the motion was agreed to.

The Report of the Committee on the Pay Roll was then taken up, and read by the Secretary, as follows :—

COMMONWEALTH OF MASSACHUSETTS.

*In Convention*, August 1, 1853.

The Committee on the Pay Roll, in compliance with an order of the Convention, directing them to make up the pay roll, have attended to that duty, in accordance with a resolve passed on the 28th day of June last, and report the sum herewith, amounting to $114,092, and also report the acccompanying order.

For the Committee,

ISAAC LIVERMORE, *Chairman.*

*Ordered*, That the Pay Roll of the Convention, as reported by the Committee, in accordance with the resolve of the 28th of June last, and the order of July 29th, be transmitted by the Secretary, to the Auditor of Accounts, and that he be requested to obtain from the Governor a warrant upon the treasury of the Commonwealth, to authorize the payment thereof, and notify the Convention when the warrant has been drawn.

Mr. GREENE, of Brookfield. At the proper time I should like to hear the pay roll read. It must prove an interesting document.

The question was taken upon the acceptance and adoption of the Report of the Committee, and it was decided in the affirmative.

*Distribution of Documents.*

Mr. WALKER, of North Brookfield. I move that the Report of the Special Committee on the distribution of documents, be taken up at the present time.

Mr. GREENE. Before that matter is gone into, I should like to hear the pay roll read. But if the Convention does not want to hear it, I will not urge the matter.

The PRESIDENT. The Chair is of opinion that it would not be in order to do so at this time.

Mr. LIVERMORE, from Cambridge. I would suggest the course indicated by the gentleman from Worcester, (Mr. Earle,) that it be read by its title. [Laughter.]

The question was then taken on Mr. Walker's motion, and it was agreed to.

The Secretary then read the Report, as follows:—

1. *Resolved*, That White & Potter be instructed to deliver, without additional charge, the remaining numbers of the quarto edition of the Journal of Debates, at such places in Boston, as the members shall respectively order.

2. *Resolved*, That each member of this Convention be furnished with one copy of the Journal of the Debates, of the octavo edition, additionally to the one heretofore ordered.

3. *Resolved*, That the Messenger be directed to deliver, without additional cost, the copies of the Debates aforesaid, together with the Journal of the Convention, heretofore ordered, with the completed file of the documents belonging to each member, at such place in Boston as the members shall respectively order. And also to send, in the usual manner, the copies of the Journal and Debates to the towns, cities, and public bodies, as ordered by the Convention, and also to send to each town or city, its quota, in proportion to population, of copies of the New Constitution, heretofore ordered to be published.

The PRESIDENT. To that Report the gentleman from Worcester, (Mr. Earle,) moves to add the following words: "That no member shall be entitled to more than three copies."

Mr. BATES, of Plymouth. Before the Convention in this stage of its session pass a vote to give each member of the Convention three copies, amounting to fifteen or eighteen dollars to each member, I hope they will stop and look at it. Besides that, it enjoins upon these persons to do certain work, without pay hereafter. I suppose by the Act calling this Convention, the Convention is to provide its own expenses. They have no more authority to order this Messenger to do any work without pay, than we have to order the Governor to do so.

Mr. WALKER, of North Brookfield. It has been my misfortune on several occasions, while acting as chairman of a Committee, to present reports, with some of the propositions of which I did not agree. That is the case in the present instance. The Report was almost unanimously adopted in Committee, though I dissented from the second resolve which provides that three copies of the octavo edition shall be furnished to members in addition to what they already have. I presume that the resolve introduced at the beginning of the session by the gentleman from Cambridge, was a mistake, because under the resolve, it would have required nine thousand copies of the Debates to supply all the members, if they had elected to take as many as they were entitled to under that order. That being the case, we are brought into the condition in which we now are, with one hundred members of this Convention without a copy of the quarto edition, and this second resolve says that all alike shall receive three copies of the quarto edition. That did not strike me as just. It seemed to me that those who had taken more of the other, should have but one copy of the quarto form. I think the operation of that second resolve would not look well under the circumstances which surround the case, and therefore, I hope the amendment will prevail. Otherwise, the Report is correct in every respect, in my judgment.

In regard to the duties which we impose upon the Messenger, I will say that we waited upon him upon the subject, and he consented to perform all those duties. The duties must be performed by somebody, or else the documents will not be distributed.

Mr. LELAND, of Holliston. When this subject was under discussion on a former occasion, the gentleman from Worcester, (Mr. Earle,) said that I had received twenty-one copies.

Mr. EARLE, of Worcester. I rise to call the gentleman to order for misstating what I said. I made no such statement.

Mr. LELAND. I do not know what point of order there is in that. All I can say is, that I understood the gentleman to say, at the time referred to, that I had received twenty-one copies, and that I now wanted three copies more. I did say that I thought it but fair that if one member was to receive three copies of the bound Reports, it was but fair that all should receive them.

Mr. BATES, of Plymouth. The Convention,

by two several orders, have directed what should be done with every copy. If the Convention passes this resolve, they must direct the Committee what to do, and make all needful provisions to enable them to do it.

Mr. EARLE. My proposition does not enlarge the distribution, but restricts it. By an order of the Convention, the members were entitled to receive a certain number of copies of these Reports. Three-fourths of the members have received them, while the other fourth have not got any, and it is imperative upon the Secretary to furnish them. This amendment proposes to limit the distribution to three copies to each member, including the one copy which all the members are to receive. So that the members will get but two copies as an offset to the twenty-one copies the other members have already got. If they have not got them they have got their equivalent in newspapers. It appears to me that there is nothing but what is perfectly fair in this proposition. I did not suppose that there was a man in the Convention who would raise a voice against it.

Mr. BATES. I move that when the question is taken it be taken by yeas and nays.

Mr. ALVORD, for Montague. I move that the whole subject be indefinitely postponed.

Mr. BIRD, of Walpole. Gentlemen ought to remember that there is a great deal more to do than the mere distribution of these Reports. But I believe that both the Messenger and the State printer agree to do this work without any extra pay, and I think, therefore, that no question ought to be raised on that head.

Mr. ALVORD. I listened attentively to the reading of the resolves, and I understood them merely to refer to the distribution of the Reports. If the Messenger is willing to do this work without any extra pay, I can have no possible objection.

Mr. UNDERWOOD. I am not well pleased, either with the Report of the Committee or the amendment. If I understood the latter, it proposes to give three copies of the bound Reports to each member.

Mr. EARLE. Only to those who have not already got any copies.

Mr. ADAMS, of Lowell. I understand that at an early period of the session many members of the Convention availed themselves of the privilege of the order presented by the gentleman from Cambridge, and passed by the Convention, of taking two, three, or half a dozen copies. I understood the proposition of the gentleman from Worcester to be that those who had received three or six copies of the quarto form, were not to receive any of the octavo. I understand that the Debates as circulated in the quarto form, without binding, are to cost $1.50 per copy, and that the bound octavo volumes will cost $5 per copy, and that those who have not subscribed for the quarto copies will be entitled to $15 worth of the octavo.

Mr. EARLE. The statement that has just been made is calculated to deceive. In fact there is no truth in it. [Loud cries of "Order, Order."] I do not mean to say that the statement is not true, as the gentleman made it, [laughter,] but that in point of fact, there is no truth in it. [Cries of "Order, Order."] The State printers have stated the matter to me thus: The whole amount of type setting they have charged, in making up their account, upon the octavo form, and have charged nothing for composition upon the quarto. That makes the octavo form nominally cost a good deal more. If there is any difference it is in favor of the octavo form. But there is no difference about it. The composition is the same and the press work is the same.

Now I understand that even if this order is adopted, the State will still have fifteen hundred volumes, or more, left at the disposal of the legislature. That body will probably place them at the disposal of the governor and council, who, again, will probably distribute them amongst their friends.

[Loud cries of "Question, Question."]

Mr. DAVIS, of Worcester. By this order, if it is amended as proposed by my colleague, and adopted by the Convention, every member will receive one copy of the bound Reports, andn one can receive more than three copies.

Mr. UNDERWOOD. I would like to know how you are going to get back the copies from those who have got their twenty copies?

Mr. EARLE. The order relates only to the octavo edition.

The question was then taken on the amendment, and it was rejected, on a division—ayes, 107; noes, 67.

Mr. BATES, of Plymouth. I wish simply to state one fact in this connection. Each member has voted himself one copy already, of the octavo edition—that is upon the journal—and now it is proposed to give each member two copies more, as the motion is that the number shall not exceed three copies; so that if this passes, each member will have voted himself three copies, or six volumes, amounting to fifteen dollars in value, which will be rung from one end of Massachusetts to the other.

Mr. EARLE. If there is any apprehension that members by that vote are depriving themelves of one copy, it is very easy to add the words, "under this order."

Mr. HALLETT, for Wilbraham. Is the question susceptible of division?

The PRESIDENT. The Chair is of opinion that the question on the several resolves may be taken separately.

Mr. HALLETT. Then I call for a division. I want that part which relates to voting three copies, put separately. We have each got one copy, and I think we ought to be satisfied with that.

Mr. CARRUTHERS, of Salisbury. I wish to ask a question, in order to obtain a little information about this matter. If a delegate has subscribed for, and received his twenty-one newspapers, he is to have three copies of the Reports, as I understand it; but if he has only subscribed for fifteen newspapers, and has made up the remainder with documents, is he not to have any extra? I want to have that matter plainly understood, whether we are going to vote three copies to those who have had their twenty-one newspapers, and are not to vote any copies to those who have had no newspapers.

Mr. PAIGE, of Boston. As I am one of those who have not subscribed for newspapers, I may perhaps vote on this subject with as good grace as anybody. I understand that we have already voted one copy to each member—that each member should have one copy of the octavo edition, and that should be the end of it, whether he had received newspapers or not. If a man has had twenty-one copies already, which he has taken in the place of newspapers, he had a right so to do; and I see no difficulty in putting the proposition fairly. We have already voted to give each member one copy in the octavo form—my proposition is to give each member one more, so that each member shall have two copies, whether he has had newspapers or not. We cannot go back and undo what has already been done.

Mr. CHAPIN, of Worcester. I like the amendment which has been offered by the gentleman from Boston. Some persons were not quite so keenly anxious as others for these Reports, and subscribed for newspapers, while others thought that they would take these instead of newspapers. Some members were "green" enough not to see this until after they had subscribed for their newspapers; and those who were sharper than the rest of us, will of course have the profit of it.

Mr. EARLE. I have not made the motion which I did, because I cared about having a copy of this work in addition to the copy to which I am already entitled; but I did so simply to see if the Convention would do an act of justice. I wanted to see if those members who had received their copies of the work under a vote of this Convention, would now allow those who were entitled under the same vote to other copies but who could not obtain them, to have partial justice done to them—whether they would not be willing to furnish the Secretary with the means of carrying out in part, their own vote. If they are not disposed to do that, I, for one, shall vote against the amendment proposed by the gentleman from Boston; for that, instead of doing justice, is giving to those who have not received anything, only just as much as it gives to those who have already received from ten to twenty copies.

Mr. OLIVER, of Lawrence, moved the previous question, which was ordered.

The question being taken on the amendment of Mr. Paige, it was agreed to; and the question was then stated on ordering the resolves to a second reading, as amended.

Mr. EARLE asked for a division of the question; and the question being put on ordering the first and third resolves to a second reading, it was agreed to.

The question then recurred on ordering the second resolve to a second reading; which resolve provided that each member of the Convention should be furnished with an additional copy of the octavo edition.

Mr. BOUTWELL, for Berlin, moved that the resolve lie upon the table, which was not agreed to.

The question then being taken, the resolve was ordered to a second reading.

*Rights of Colored Citizens.*

Mr. STETSON, of Braintree, moved a reconsideration of the vote by which the Convention ordered the protest of William C. Nell and others to be entered upon the journal of the Convention.

The PRESIDENT. The motion lies over until to-morrow, under the rule. [Laughter.]

Mr. STETSON. I move a suspension of the rule.

Mr. HALLETT, for Wilbraham. I rise to a question of privilege, in regard to this matter. I should not, on my own account or interest have called up the subject which the gentleman from Braintree has moved to reconsider; but it being presented, I think it my duty to refer to this protest, because I suppose that it was intended to bear upon myself, and others much more distinguished gentlemen than myself——

Mr. BIRD, of Walpole. Mr. President, I rise to a question of order. The point which I make is, that the gentleman must state his question of privilege, before he speaks upon it.

Mr. HALLETT. That is just what I am doing. The Convention have ordered to be entered upon the journal of this body, a statement in the form of a protest, which places some of the members of the Convention in a false position, and attributes language to them which they did not utter. I take it that that is a question of privilege.

Mr. BIRD. I ask for the ruling of the Chair upon that point.

Mr. HALLETT. Certain statements were made upon this floor in debate with regard to the admission of colored persons into the militia of the United States, and I find that in a protest which has been received and acted on while I was absent, there is a statement manifestly, though not by name, attributed to me, which I never made. The Convention, I presume, without understanding the matter at the moment, by a party vote, ordered that statement to go upon its records. It is wholly immaterial to me whether the Convention choose to persist in that course or not, as respects myself; but before the question is decided, I want it fully understood that the protest which they have ordered to be entered upon their journal contains intimations against two of the members of this body; I want the Convention also to know what they are charged with as a body, in that protest, so that they may knowingly decide whether they are ready to cause to be placed upon their records a statement that they have done an act which is unconstitutional, and also that in their opinion, a law of the United States is unconstitutional. That protest farther says, among other things, that a member of this Convention, in a speech made to this Convention, declared that if a colored person were to be elected governor of Massachusetts, the United States would interpose to prevent his acting as commander-in-chief of the Commonwealth. Now, Sir, no such thing was said by any member, and I do not want that class of our fellow-citizens, who very honestly, I dare say, make this protest, and whose rights I respect as much as any body, to labor under a misapprehension on that subject, for I have no doubt they were misled by some false report. I said all that was directly said upon that topic except the similar opinion given by the member from Boston, (Mr. Choate,) and what I did say was precisely this——

Mr. BIRD, (interposing). Mr. President: This discussion is entirely out of place at this time, for the gentleman from Wilbraham is not alluded to by name, or in any way that would lead any one to suppose he was alluded to at all, in that document.

The PRESIDENT. The Chair will take the liberty to state that as this is the last day of the session, and the motion for reconsideration must be entertained now or it never can be entertained, the Chair will admit the motion without putting the question on a suspension of the rules. The question is, therefore, upon the motion of the gentleman from Braintree that the vote of the Convention be reconsidered, by which the petition of William C. Nell and others was ordered to be entered upon the journal.

Mr. BUTLER. Upon the motion of reconsideration I move the previous question.

Mr. HALLETT. I hope the gentleman will have the courtesy to withdraw that motion and allow me to finish my statement.

Mr. BUTLER. I certainly will.

Mr. HALLETT. The language attributed in that petition to a member of this Convention, although it was not what I said, yet evidently could be attributed to no one but me, because that was the line of argument which I used, although the statement which I made was entirely different. It was in reply to a question of the gentleman from Natick, who now occupies the chair, (Mr. Wilson,) when the resolutions in relation to the militia were under discussion, as to what would be the powers of the governor of this Commonwealth under the Constitution of the United States, if the person who should be elected governor of this Commonwealth should happen to be a person of color; and my exact language, as reported at the time, I now quote.

What I said in answer to that question was :—

"That while the Commonwealth of Massachusetts by her Constitution makes no distinction of color in the choice of governor, yet the Constitution of the United States gives the power to congress to declare what shall constitute the militia; and in the exercise of that power congress has said that it shall be *white* citizens. Consequently although a colored citizen might be the governor of the Commonwealth of Massachusetts, and by virtue of that office, commander-in-chief, yet he can never be enrolled as a soldier in the militia or be an officer of the militia of the United States; and if, under such circumstances, the governor should be a colored man, you must find some one else to command the militia, if you mean to conform to the supreme law of the land for organizing and disciplining the militia."

Now, Sir, that was what I said, and it is entirely different from the language attributed in the protest. It rests simply upon this ground: The Constitution has given to Congress power to say who shall constitute the militia, and they have said that male white citizens shall constitute that body. But Congress has made no such distinction as to the army or the navy, and a colored person

may be commander-in-chief of the army, or a commodore in the navy. But congress, in the full exercise of constitutional power, has declared that white citizens alone shall belong to the militia, and, therefore, this Convention has no power to compose the militia of such persons; and hence, a protest against the Convention for not doing what it has no power to do, is simply an absurdity to enter upon the records.

Mr. DAVIS, of Fall River. I would inquire whether, upon a question of privilege, the main question can be argued?

Mr. HALLETT. I was making a privileged explanation, and, if the gentleman had preserved his politeness for a few minutes longer, he would have saved himself the trouble of this interruption. I am aware of the state of feeling existing with some members in this Convention, upon this subject of color, but I desire to stand right in every matter touching the Union of the States, and to place myself upon constitutional ground; and if the Convention see fit to place me falsely upon their record, and put what is an untruth there, with them the responsibility will rest, and discredit does not attach to me.

Mr. BIRD. I move the previous question.

The previous question was ordered.

The question first recurred upon the motion to reconsider the vote, by which the protest was ordered to be placed upon the records of the Convention, and, being put, it was decided in the affirmative; there being, on a division—ayes, 91; noes, 57.

The question then being upon the motion to enter the protest upon the journal of the Convention——

Mr. BIRD moved to lay the protest upon the table, which motion was agreed to.

So it was laid upon the table.

The PRESIDENT here announced the Committee heretofore ordered to examine and count the return of votes on the several Constitutional Propositions, to consist of the following gentlemen:—

| | | |
|---|---|---|
| Messrs. | Boutwell, | for Berlin, |
| | Dana, | " Manchester, |
| | Giles, | of Boston, |
| | Morton, | " Andover, |
| | Upham, | " Salem, |
| | Butler, | " Lowell, |
| | Wilson, | " Natick, |
| | Griswold, | for Erving, |
| | Frothingham, | of Charlestown, |
| | Wood, | " Middleborough, |
| | Willard, | " Boston, |
| | Aspinwall, | " Brookline, |
| | Chapin, | of Springfield, |
| | Sleeper, | " Roxbury, |
| | Allen, | " Worcester, |
| | French, | " New Bedford, |
| | Oliver, | " Lawrence, |
| | Eames, | " Washington, |
| | Phinney, | for Chatham, and |
| | White, | of Quincy. |

Mr. WILSON. I would inquire of the Chair if there is any more business before the Convention?

The PRESIDENT. The Chair is not aware of any unfinished business.

*Closing Remarks.*

Mr. LOTHROP, of Boston. I should like to inquire if the Chair has been notified of a vote passed by the Convention on Saturday last, presenting to him the thanks of this body for the manner in which he has discharged the duties of the Chair?

I hope, Mr. President, we shall not separate without a few words from some gentleman and from the Chair, suitable and appropriate to the close of the highly important duties in which we have been engaged. I, for one, Sir, may take this occasion to say, perhaps, that I regretted that the subject upon which we acted on Saturday last, was brought forward at that precise time. I think it would have been much better, more appropriate, and more interesting to all of us, if it had been deferred until we approached the closing hours of the session, and of our official connection as members of this Convention. It may not be improper for me, also to say, that for one, I regretted the precise phraseology of that vote. Gentlemen know very well that I am no party politician. I am here with political opinions and convictions more in harmony with one party than another; and to those convictions I have aimed to be true, and presume we all have had a similar aim. But I am also here, with those views, feelings and relations, which my profession disposes me to cherish towards all men of all parties. I know not that I am competent to judge of this matter, but it does seem to me that men of all parties here, should be ready to give a hearty, full, and generous response to a vote of thanks to our presiding officer. It does seem to me that we, all of us, owe to him that expression of feeling. I have never before been a member of a deliberative assembly, and am not, therefore, able to judge by comparison and contrast, but I presume every man here, to whatever political party he belongs, and however large his legislative experience, and, although he may, occasionally have

differed from or disliked the rulings of the Chair, will yet—when he considers all the difficulties of the position—the duties, always arduous and often delicate that devolve upon it—be disposed to admit that the distinguished gentleman who has filled the Chair, has presided over the deliberations of this assembly with eminent ability, with great impartiality, with a patient courtesy, and constant and assiduous fidelity. This is very strongly my own impression, and I think that we owe it very much to him, that we have been able to conduct our discussions and complete our business with so much harmony—with the introduction of so little that was personal, improper or unparliamentary.

I hope, Sir, to hear on the part of other gentlemen, an expression of similar sentiments, and I hope that the Chair will be disposed to say to us some kind, appropriate and touching words before we depart from these halls for the last time, that we may all go to our homes feeling kindly disposed to each other, inspired with a loftier patriotism and a deeper interest in the good old Commonwealth of Massachusetts, which we have all been here endeavoring to serve, according to our honest convictions and to the best of our ability, and whose glory and prosperity we would have ever increasing and perpetual.

Mr. EAMES, of Washington. I can say for one, that I have been much gratified with the manner in which the Chair has conducted and managed the business of this Convention. This is the second Convention for revising the Constitution of which I have had the honor of being a member, and I can say for one, that I have felt much gratified at the unanimity of feeling which has generally pervaded our deliberations.

I was much pleased with the remarks which fell from the gentleman from Pittsfield, (Mr. Briggs,) on Saturday last, and I can say that my feelings correspond with the sentiments which he then expressed. It is not any way likely, according to the course of human events, that we shall all meet again. There are only six of us who were members of the Convention of 1820, and it is seldom that any of us meet in two Conventions to amend the organic law. I had the impression that in the Convention of 1820 there was but one individual who had been a member of the Convention of 1780. But I have been told that there were two. The Hon. John Quincy Adams was one. For one, I can say, I part with my associates here in perfect friendship, and shall ever meet them hereafter with the same feeling.

Mr. HILLARD, of Boston. I certainly respond most cordially and sincerely to all that has fallen from my valued friend from Boston, (Mr. Lothrop,) and, indeed, were I to express my full sense of the ability with which the duties of the Chair have been performed, and of the obligations we are under to the President, I should—that gentleman being present—consider myself as passing beyond the limits of decorum and good taste. I can only say, in recalling the conduct and bearing of the gentleman who has presided over our deliberations, I cannot bring to my thoughts any person in the Convention or out of it, whom we could have substituted for him, and been gainers in the exchange. In looking back upon our discussions, we have a right to say that they have been characterized by a more than common degree of decorum and propriety, considering the nature of the topics and the zeal of the speakers. Of course it is impossible, in collision of strong convictions and strong feelings, that occasional sparks of excitement should not have flashed forth. But I submit, that in comparison with similar bodies, we may look back with satisfaction and pride at the course of our debates, and especially at the harmonious feelings with which our deliberations are brought to a close.

To those who have had experience in such bodies, I need not say how much we are indebted to the spirit which has presided over us, to the spirit of mingled firmness, tact, and moderation, that has overshadowed us from the beginning; and I, for one, am ready to make acknowledgment in the fullest and amplest terms.

Mr. HALLETT, for Wilbraham. I think we cannot separate without reflecting with some degree of interest and intenseness, upon that very important relation which has existed between you, Sir, as the presiding officer of this body, and ourselves, individually, as its members. Sir, while all the people of this earth—consisting now of some nine hundred millions of souls—are under different forms of government, which have existed from time immemorial, this spot upon God's earth, the United States of America, composed of twenty-three or twenty-four millions of people, is the only place, and this the only people, in which such a Convention as this could assemble for such a purpose as that for which it was called. Now, that in the simple exercise of the peaceful right of citizens, as delegates of the people of the Commonwealth, we have come here unmolested and quietly to frame a constitutional government to be submitted to the people, upon which they are to say "yes" or "no," and which, if they say "yes," is to take the place of the old government, by as easy a transition as takes place in ordinary affairs, and that this can be done and that we are the agents, is certainly a thing that

can never pass from our minds. It is a link that should bind us together as brethren while we live. Let us never forget, if we should hereafter be brought in any conflict with each other, that here, in this Convention, we stood together, delegates of the people, with this great power of proposing a form of government for their adoption.

Sir, that the proceedings of this Convention have been conducted so harmoniously, and that its results have thus far been so successful and satisfactory, and will terminate, as I think, so usefully to the Commonwealth, has been, in a great measure, owing to the manner in which you have exercised the authority with which the Convention invested you. I am sure that every heart will feel, and every voice will respond to the resolution of thanks for the manner in which you have presided over us.

Mr. MARVIN, of Boston. Before any remarks are made by the President, I hope that some gentleman will close our session with prayer. I feel that we are all indebted to the kind providence of Almighty God, for having preserved us, with one exception, in life and health. We began by imploring the blessing of God; let us close our labors by rendering him thanks, and giving him praise.

Mr. WILSON, of Natick. The hours of this Convention are numbered. Our duties here are performed. To the people we have committed the results of our deliberations and labors. After ninety days of toil together, we are about to part, to meet not again in this world of vicissitude and death. In this closing hour it is proper for us to turn our thoughts to that Being who has preserved us. I move that the Convention invite the Rev. Dr. Lothrop to close our session with prayer.

The PRESIDENT. The Chair will assume the consent of the Convention, and invites the Rev. Mr. Lothrop to perform that duty.

Mr. LOTHROP then took the President's desk, and offered the following

*Prayer.*

Almighty God! We began our labors by invoking Thy blessing; we would close them by again invoking that blessing, by lifting up devout and grateful hearts to Thee, the God of our fathers, and thanking Thee for all Thy mercies in past generations, and for all Thy goodness to us, here present, in preserving our lives, and in enabling us to attend faithfully to the duties that have devolved upon us. We thank Thee, O God, for all the harmony and good feeling, for all the mutual respect and kindness that have prevailed through our deliberations. We thank Thee that, guided and sustained by Thy good providence, we have now been enabled to bring these deliberations to a close; and we would commend ourselves, and the great work on which we have been engaged, and all the high and important interests of this ancient and honorable Commonwealth, to Thy divine disposal, to Thy protection and care, and to Thy parental providence. May we, O God—may all the people of the Commonwealth—continue to adore, and reverence, and love, and serve Thee, the God of our fathers, and so walk in the ways of virtue, of uprightness, of all Christian grace and godliness, that we may continue to be a name and a praise among the communities of the earth—that the blessing of the Lord our God may be upon us, even as it was upon our fathers. May Thy peace abide in all our hearts, Thy blessing be upon all our families, Thy goodness and favor attend us, now and forever. We ask these mercies through Him who loved us, and gave Himself for us, to whom be glory, in His church, forever.

Mr. WALKER, of North Brookfield, moved that the Convention do now adjourn *sine die*.

The motion was agreed to.

*President's Address.*

The PRESIDENT. Gentlemen of the Convention. Availing myself of the privilege usually afforded those who stand in the position I now occupy, before I speak that word which severs our official relations with each other, and with the Commonwealth, I return you my sincere thanks for the generous kindness with which you have received the limited measure of fidelity and capacity I have been able to bring to the discharge of my duties.

There are many reasons why this generosity should be grateful to me. But none is stronger than that which arises from the high character of the assembly to whose indulgence I am so large a debtor. For patient investigation, assiduous, unremitting, and conscientious devotion to laborious duties, in a most oppressive season, I believe no representative assembly ever surpassed that whose labors are now about to close. It is not for me to distrust the wisdom of the counsels by which you have been guided. I am impressed with the conviction that your labors will be approved; that the results you have reached will be ratified by the people of the Commonwealth. The moment that fortune has assigned you for their submission to the people you represent, is auspicious. Although the silent dial before us indicates a brief moment beyond, yet *we* have not closed the day which is the anniversary of

the embarkation of the Pilgrim Fathers; of the inauguration of that series of sublime events that has resulted in the consummation of constitutional liberty, and permanent popular governments.

Whatever destiny may be in store for our republic—whether it be amid the convulsions of distant empires, to sway the sceptre of earth's seas, or with an expansive power hitherto unknown, to absorb and consolidate in a single state, of limited powers, the territory of continents, or to achieve a nobler triumph in the domain of industry, science and art—I trust that Massachusetts, true to the instincts of her nature, as colony or commonwealth, may still stand at the head of the column of progressive States; her Constitution without fault, and her people without fear.

I am sure I do not misinterpret the feelings of your hearts, in saying that we cannot separate without chastening our anticipated joys by recalling the memory of one, whose seat to-night is vacant, whose life was distinguished by the virtues which adorn human nature, but who in health and high hopes has been swept from among us by the hand of death. We cannot separate without a tear of sympathy and consolation for the happy family by this bereavement made desolate; nor yet without a consciousness that the loss which is ours, is the gain of our brother who is gone; that it is for us to mourn for the living only, and not for the dead. We cannot separate without grateful and fervent acknowledgments for the Divine goodness that has preserved so many of us from suffering, sickness, and death.

But the delays of the day's session, the tediousness of the parting act and word, have already detained you too long from the invigorating ocean air, and the sweet and pure breeze of inland and highland; from the loved sights and sounds of *home;* the congratulations of friends, and the applause of satisfied constituencies, that must revive your exhausted energies, and enable you to recall, without pain, the laborious and anxious days we have passed together; joys that might almost renew a life under the hand of death. No act or word of mine shall add to the unwelcome detention. Health, happiness, honor, to you all, gentlemen. Your kindness is engraven on my heart, where, every day, I will turn the leaf to read it.

It remains for me but to announce that the Convention of 1853 is adjourned, without day.

# APPENDIX.

## Commonwealth of Massachusetts.

In the Year of our Lord One Thousand Eight Hundred and Fifty-Two.

## AN ACT

RELATING TO THE CALLING A CONVENTION OF DELEGATES OF THE PEOPLE, FOR THE PURPOSE OF REVISING THE CONSTITUTION.

*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. The inhabitants of the several cities, towns, districts, and places within this Commonwealth, qualified to vote for senators or representatives in the general court, shall, on the second Monday of November next, at the meetings to be then held in the several cities and towns in the Commonwealth, for the choice of governor, lieutenant-governor, senators and representatives in the general court, an article for this purpose being inserted in the warrants calling said meetings, give in their votes by ballot on this question: "Is it expedient that delegates should be chosen to meet in convention for the purpose of revising or altering the constitution of government of this Commonwealth?" And the vote upon said question shall be in open meeting, and the votes in the several cities and towns in the Commonwealth shall be received, sorted, counted, declared, and transmitted to the Secretary of the Commonwealth, in the same manner as the votes for governor, lieutenant-governor, and senators are now received, sorted, counted, declared and transmitted by the constitution and laws of the Commonwealth; and all returns not thus made shall be rejected in the counting. And the Governor and Council shall open and examine the returns, made as aforesaid, and count the votes given on the said question; and the governor shall, by public proclamation, to be made on or before the first Wednesday in January next, make known the result, by declaring the number appearing in favor of choosing delegates for the purpose aforesaid, and the number of votes appearing against the same; and if it shall appear that a majority of the votes given in and returned as aforesaid are in favor of choosing delegates as aforesaid, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and in case of such majority, the governor shall call upon the people to elect delegates to meet in Convention, in the manner hereinafter provided.

Sect. 2. If it shall be declared by the said proclamation, that the majority of votes, as aforesaid, is in favor of choosing delegates, as abovementioned, the inhabitants of the several cities and towns within the Commonwealth, now entitled any one year to send one or more representatives to the general court, shall, on the first Monday of March, in the year one thousand eight hundred and fifty-three, assemble in their several meetings, to be duly notified by warrant from the selectmen of the several towns and the mayor and aldermen of the several cities, and shall elect one or more delegates, not exceeding the number of representatives to which each town or city was entitled last year, it being the year in which the valuation of estates in the Commonwealth was settled, to meet delegates from other towns and cities in Convention, for the purposes hereinafter expressed. And at such meetings of the inhabitants, every person entitled to vote for representatives in the general court, shall have a right to vote in the choice of delegates, and the same officers, in the several cities and towns in the Commonwealth, shall preside at such elections, as now preside in the choice of representatives to the general court; and the votes for said delegates shall be received, sorted, counted, declared, recorded, and copies thereof delivered to the dele-

gates chosen, in the same manner as is now provided for in the case of representatives to the general court. And all laws now in force, regulating the duty and conduct of town and city officers, sheriffs, magistrates, and electors, in the election of governor, lieutenant-governor, senators and representatives, shall, as far as applicable, apply, and be in full force and operation, as to all meetings holden, and elections and returns made, under this act, or which by this act are required to be holden or made, and upon the like forfeitures and penalties.

Sect. 3. The persons so elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in May, in the year one thousand eight hundred and fifty-three; and they shall be the judges of the returns and elections of their own members, and may adjourn from time to time; and one hundred of the persons elected shall constitute a quorum for the transaction of business; and they shall proceed, as soon as may be, to organize themselves in Convention, by choosing a president and such other officers as they may deem expedient, and by establishing proper rules of proceeding; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of government of this Commonwealth, or the propriety and expediency of making any, and if any, what alterations or amendments, in the present Constitution of government of this Commonwealth. And such 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 said Convention shall direct; and if ratified by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly; and if not so ratified, the present Constitution shall be and remain the Constitution of Government of this Commonwealth.

Sect. 4. The said Convention shall establish the pay or compensation of its officers and members, and the expense of its session; and his exellency the governor, by and with the advice and consent of the Council, is authorized to draw his warrant on the treasury therefor.

Sect. 5. The Secretary of the Commonwealth is hereby directed forthwith, after the passage thereof, to transmit printed copies of this Act to the selectmen of each town, and the mayor and aldermen of each city within the Commonwealth; and whenever the governor shall issue his proclamation, calling upon the people to elect delegates, to meet in Convention as aforesaid, the said secretary shall also, immediately thereafter, transmit printed copies of said proclamation, attested by himself, to the selectmen of each town, and the mayor and ealdrmen of each city, in the Commonwealth.

[*Approved, May 7, 1852.*]

# ABSTRACT OF THE RETURNS OF VOTES

*For and against calling a Convention to Revise the Constitution, under the Act of May 7, 1852.*

Election, November 8, 1852.

COUNTY OF SUFFOLK.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Boston, | 9,974 | 3,458 | 6,456 |
| Chelsea, | 790 | 420 | 370 |
| North Chelsea, | 56 | 18 | 38 |
| Winthrop, | 37 | 21 | 16 |
| 4 Towns, | 10,859 | 3,977 | 6,880 |

COUNTY OF ESSEX.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Amesbury, | 545 | 323 | 222 |
| Andover, | 721 | 439 | 282 |
| Beverly, | 885 | 490 | 395 |
| Boxford, | 173 | 34 | 139 |
| Bradford, | 218 | 127 | 91 |
| Danvers, | 1,274 | 638 | 636 |
| Essex, | 241 | 160 | 81 |

ABSTRACT OF VOTES.

## COUNTY OF ESSEX—CON.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Georgetown, | 353 | 194 | 159 |
| Gloucester, | 708 | 395 | 313 |
| Groveland, | 243 | 151 | 92 |
| Hamilton, | 164 | 94 | 70 |
| Haverhill, | 1,108 | 644 | 464 |
| Ipswich, | 424 | 251 | 173 |
| Lawrence, | 1,046 | 556 | 490 |
| Lynn, | 1,834 | 1,006 | 828 |
| Lynnfield, | 92 | 69 | 23 |
| Manchester, | 219 | 157 | 62 |
| Marblehead, | 596 | 397 | 199 |
| Methuen, | 334 | 149 | 185 |
| Middleton, | 126 | 94 | 32 |
| Newbury, | 148 | 39 | 109 |
| Newburyport, | 1,227 | 463 | 764 |
| Rockport, | 387 | 245 | 142 |
| Rowley, | 155 | 22 | 133 |
| Salem, | 1,806 | 686 | 1,120 |
| Salisbury, | 338 | 206 | 132 |
| Saugus, | 251 | 191 | 60 |
| Swampscott, | 99 | 86 | 13 |
| Topsfield, | 189 | 57 | 132 |
| Wenham, | 188 | 97 | 91 |
| West Newbury, | 235 | 107 | 128 |
| 31 Towns, | 16,327 | 8,567 | 7,760 |

## COUNTY OF MIDDLESEX.

| | | | |
|---|---|---|---|
| Acton, | 256 | 197 | 59 |
| Ashby, | 330 | 92 | 138 |
| Ashland, | 185 | 83 | 102 |
| Bedford, | 166 | 135 | 31 |
| Billerica, | 289 | 144 | 145 |
| Boxborough, | 72 | 44 | 28 |
| Brighton, | 215 | 14 | 201 |
| Burlington, | 77 | 66 | 11 |
| Cambridge, | 1,659 | 551 | 1,108 |
| Carlisle, | 103 | 72 | 31 |
| Charlestown, | 1,783 | 686 | 1,097 |
| Chelmsford, | 260 | 159 | 101 |
| Concord, | 270 | 164 | 106 |
| Dracut, | 246 | 153 | 93 |
| Dunstable, | 126 | 69 | 57 |
| Framingham, | 554 | 199 | 355 |
| Groton, | 305 | 159 | 146 |
| Holliston, | 324 | 213 | 111 |
| Hopkinton, | 381 | 291 | 90 |
| Lexington, | 261 | 101 | 160 |
| Lincoln, | 105 | 44 | 61 |
| Littleton, | 155 | 91 | 64 |
| Lowell, | 4,100 | 2,253 | 1,847 |
| Malden, | 492 | 251 | 241 |
| Marlborough, | 464 | 357 | 107 |
| Medford, | 594 | 298 | 296 |
| Melrose, | 209 | 151 | 58 |
| Natick, | 434 | 217 | 217 |

## COUNTY OF MIDDLESEX—CON.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Newton, | 581 | 245 | 336 |
| Pepperell, | 234 | 110 | 124 |
| Reading, | 557 | 281 | 276 |
| Sherborn, | 141 | 44 | 97 |
| Shirley, | 197 | 116 | 81 |
| Somerville, | 380 | 174 | 206 |
| South Reading, | 388 | 218 | 170 |
| Stoneham, | 388 | 276 | 112 |
| Stowe, | 139 | 82 | 57 |
| Sudbury, | 215 | 136 | 79 |
| Tewksbury, | 156 | 62 | 94 |
| Townsend, | 281 | 190 | 91 |
| Tyngsborough, | 91 | 50 | 41 |
| Waltham, | 600 | 310 | 290 |
| Watertown, | 341 | 154 | 187 |
| Wayland, | 194 | 109 | 85 |
| West Cambridge, | 268 | 124 | 144 |
| Westford, | 235 | 130 | 105 |
| Weston, | 152 | 76 | 76 |
| Wilmington, | 124 | 75 | 49 |
| Winchester, | 259 | 112 | 147 |
| Woburn, | 568 | 427 | 141 |
| 50 Towns, | 20,804 | 10,755 | 10,049 |

## COUNTY OF WORCESTER.

| | | | |
|---|---|---|---|
| Ashburnham, | 338 | 220 | 118 |
| Athol, | 370 | 217 | 153 |
| Auburn, | 125 | 102 | 23 |
| Barre, | 535 | 253 | 282 |
| Berlin, | 130 | 101 | 29 |
| Blackstone, | 332 | 242 | 90 |
| Bolton, | 218 | 117 | 101 |
| Boylston, | 129 | 90 | 39 |
| Brookfield, | 307 | 235 | 72 |
| Charlton, | 354 | 300 | 54 |
| Clinton, | 364 | 184 | 180 |
| Dana, | 140 | 72 | 68 |
| Douglas, | 335 | 214 | 121 |
| Dudley, | 214 | 157 | 57 |
| Fitchburg, | 847 | 561 | 286 |
| Gardner, | 285 | 199 | 86 |
| Grafton, | 503 | 307 | 196 |
| Hardwick, | 318 | 185 | 133 |
| Harvard, | 273 | 180 | 93 |
| Holden, | 327 | 203 | 124 |
| Hubbardston, | 322 | 250 | 72 |
| Lancaster, | 231 | 54 | 177 |
| Leicester, | 389 | 281 | 108 |
| Leominster, | 588 | 377 | 211 |
| Lunenburg, | 238 | 159 | 79 |
| Mendon, | 182 | 141 | 41 |
| Milford, | 657 | 466 | 191 |
| Millbury, | 412 | 294 | 118 |
| New Braintree, | 120 | 51 | 69 |
| Northborough, | 298 | 184 | 114 |

ABSTRACT OF VOTES.

## COUNTY OF WORCESTER—CON.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Northbridge, | 272 | 150 | 122 |
| North Brookfield, | 319 | 249 | 70 |
| Oakham, | 145 | 102 | 43 |
| Oxford, | 401 | 272 | 129 |
| Paxton, | 161 | 126 | 35 |
| Petersham, | 270 | 160 | 110 |
| Phillipston, | 136 | 48 | 88 |
| Princeton, | 227 | 141 | 86 |
| Royalston, | 229 | 66 | 163 |
| Rutland, | 172 | 132 | 40 |
| Shrewsbury, | 320 | 229 | 91 |
| Southborough, | 211 | 155 | 56 |
| Southbridge, | 411 | 261 | 150 |
| Spencer, | 473 | 248 | 225 |
| Sterling, | 327 | 138 | 189 |
| Sturbridge, | 330 | 217 | 113 |
| Sutton, | 360 | 298 | 62 |
| Templeton, | 368 | 236 | 132 |
| Upton, | 333 | 213 | 120 |
| Uxbridge, | 322 | 211 | 111 |
| Warren, | 256 | 140 | 116 |
| Webster, | 336 | 200 | 136 |
| Westborough, | 367 | 215 | 152 |
| West Boylston, | 269 | 221 | 48 |
| West Brookfield, | 226 | 158 | 68 |
| Westminster, | 356 | 214 | 142 |
| Winchendon, | 400 | 230 | 170 |
| Worcester, | 2,908 | 2,027 | 881 |
| 58 Towns, | 20,786 | 13,453 | 7,333 |

## COUNTY OF HAMPSHIRE.

| | | | |
|---|---|---|---|
| Amherst, | 501 | 180 | 321 |
| Belchertown, | 411 | 244 | 167 |
| Chesterfield, | 231 | 141 | 90 |
| Cummington, | 272 | 138 | 134 |
| Easthampton, | 205 | 93 | 112 |
| Enfield, | 163 | 34 | 129 |
| Goshen, | 121 | 27 | 94 |
| Granby, | 155 | 28 | 127 |
| Greenwich, | 158 | 105 | 53 |
| Hatfield, | 194 | 83 | 111 |
| Hadley, | 321 | 57 | 264 |
| Middlefield, | 107 | 44 | 63 |
| Northampton, | 883 | 463 | 420 |
| Norwich, | 150 | 93 | 57 |
| Pelham, | 138 | 102 | 36 |
| Plainfield, | 141 | 29 | 112 |
| Prescott, | 108 | 45 | 63 |
| South Hadley, | 275 | 93 | 182 |
| Southampton, | 257 | 132 | 125 |
| Ware, | 522 | 266 | 256 |
| Westhampton, | 136 | 53 | 83 |
| Williamsburg, | 311 | 185 | 126 |
| Worthington, | 213 | 94 | 119 |
| 23 Towns, | 5,973 | 2,729 | 3,244 |

## COUNTY OF HAMPDEN.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Blandford, | 284 | 183 | 101 |
| Brimfield, | 245 | 139 | 106 |
| Chester, | 248 | 132 | 116 |
| Chicopee, | 824 | 357 | 467 |
| Granville, | 239 | 147 | 92 |
| Holland, | 42 | – | 42 |
| Holyoke, | 336 | 196 | 140 |
| Longmeadow, | 188 | 77 | 111 |
| Ludlow, | 207 | 121 | 86 |
| Monson, | 374 | 202 | 172 |
| Montgomery, | 83 | 76 | 7 |
| Palmer, | 427 | 239 | 188 |
| Russell, | 92 | 76 | 16 |
| Southwick, | 212 | 153 | 59 |
| Springfield, | 1,659 | 862 | 797 |
| Tolland, | 101 | 58 | 43 |
| Wales, | 82 | 47 | 35 |
| Westfield, | 772 | 512 | 260 |
| West Springfield, | 473 | 197 | 276 |
| Wilbraham, | 320 | 212 | 108 |
| 20 Towns, | 7,208 | 3,986 | 3,222 |

## COUNTY OF FRANKLIN.

| | | | |
|---|---|---|---|
| Ashfield, | 271 | 162 | 109 |
| Bernardston, | 212 | 118 | 94 |
| Buckland, | 224 | 147 | 77 |
| Charlemont, | 220 | 130 | 90 |
| Coleraine, | 281 | 136 | 145 |
| Conway, | 386 | 207 | 179 |
| Deerfield, | 423 | 233 | 190 |
| Erving, | 55 | 49 | 6 |
| Gill, | 124 | 62 | 62 |
| Greenfield, | 520 | 256 | 264 |
| Hawley, | 129 | 62 | 67 |
| Heath, | 127 | 75 | 52 |
| Leverett, | 170 | 116 | 54 |
| Leyden, | 118 | 82 | 36 |
| Monroe, | 42 | 32 | 10 |
| Montague, | 240 | 151 | 89 |
| New Salem, | 217 | 126 | 91 |
| Northfield, | 297 | 190 | 107 |
| Orange, | 234 | 131 | 103 |
| Rowe, | 121 | 46 | 75 |
| Shelburne, | 241 | 102 | 139 |
| Shutesbury, | 178 | 141 | 37 |
| Sunderland, | 202 | 95 | 107 |
| Warwick, | 197 | 128 | 69 |
| Wendell, | 143 | 106 | 37 |
| Whately, | 256 | 118 | 138 |
| 26 Towns, | 5,628 | 3,201 | 2,427 |

ABSTRACT OF VOTES.

## COUNTY OF BERKSHIRE.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Adams, | 885 | 439 | 446 |
| Alford, | 92 | 68 | 24 |
| Becket, | 185 | 87 | 98 |
| Cheshire, | 218 | 214 | 4 |
| Clarksburg, | 61 | 28 | 33 |
| Dalton, | 166 | 118 | 48 |
| Egremont, | 233 | 113 | 120 |
| Florida, | 78 | 46 | 32 |
| Great Barrington, | – | – | – |
| Hancock, | 116 | 65 | 51 |
| Hinsdale, | 164 | 38 | 126 |
| Lanesborough, | 237 | 127 | 110 |
| Lee, | 526 | 250 | 276 |
| Lenox, | 279 | 169 | 110 |
| Monterey, | 145 | 105 | 40 |
| Mount Washington, | 36 | 30 | 6 |
| New Ashford, | 43 | 30 | 13 |
| New Marlborough, | 310 | 170 | 140 |
| Otis, | 192 | 109 | 83 |
| Peru, | 96 | 34 | 62 |
| Pittsfield, | 875 | 435 | 440 |
| Richmond, | 117 | 97 | 20 |
| Sandisfield, | 246 | 153 | 93 |
| Savoy, | 178 | 154 | 24 |
| Sheffield, | 348 | 198 | 150 |
| Stockbridge, | 310 | 180 | 130 |
| Tyringham, | 119 | 74 | 45 |
| Washington, | 87 | 50 | 37 |
| West Stockbridge, | 200 | 89 | 111 |
| Williamstown, | 398 | 232 | 166 |
| Windsor, | 177 | 104 | 73 |
| 31 Towns, | 7,117 | 4,006 | 3,111 |

## COUNTY OF NORFOLK.

| | | | |
|---|---|---|---|
| Bellingham, | 168 | 138 | 30 |
| Braintree, | 434 | 176 | 258 |
| Brookline, | 290 | 87 | 203 |
| Canton, | 323 | 145 | 178 |
| Cohasset, | 132 | 43 | 89 |
| Dedham, | 607 | 278 | 329 |
| Dorchester, | 961 | 468 | 493 |
| Dover, | 93 | 41 | 52 |
| Foxborough, | 306 | 186 | 120 |
| Franklin, | 274 | 152 | 122 |
| Medfield, | 112 | 76 | 36 |
| Medway, | 380 | 230 | 150 |
| Milton, | 228 | 133 | 115 |
| Needham, | 230 | 145 | 85 |
| Quincy, | 623 | 343 | 280 |
| Randolph, | 601 | 242 | 359 |
| Roxbury, | 1,273 | 424 | 849 |
| Sharon, | 183 | 111 | 72 |
| Stoughton, | 464 | 249 | 215 |
| Walpole, | 300 | 161 | 139 |
| Weymouth, | 810 | 459 | 351 |
| West Roxbury, | 308 | 63 | 245 |
| Wrentham, | 360 | 219 | 141 |
| 23 Towns, | 9,480 | 4,569 | 4,911 |

## COUNTY OF BRISTOL.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Attleborough, | 673 | 388 | 285 |
| Berkley, | 140 | 96 | 44 |
| Dartmouth, | 526 | 281 | 245 |
| Dighton, | 226 | 136 | 90 |
| Easton, | 414 | 235 | 179 |
| Fairhaven, | 602 | 335 | 267 |
| Fall River, | 936 | 526 | 410 |
| Freetown, | 185 | 136 | 49 |
| Mansfield, | 280 | 235 | 45 |
| New Bedford, | 1,934 | 873 | 1,061 |
| Norton, | 266 | 159 | 107 |
| Pawtucket, | 365 | 215 | 150 |
| Raynham, | 206 | 139 | 67 |
| Rehoboth, | 282 | 185 | 97 |
| Seekonk, | 316 | 220 | 96 |
| Somerset, | 194 | 113 | 81 |
| Swanzey, | 210 | 117 | 93 |
| Taunton, | 1,430 | 601 | 829 |
| Westport, | 244 | 176 | 68 |
| 19 Towns, | 9,429 | 5,166 | 4,263 |

## COUNTY OF PLYMOUTH.

| | | | |
|---|---|---|---|
| Abington, | 826 | 562 | 264 |
| Bridgewater, | 458 | 206 | 252 |
| Carver, | 208 | 96 | 112 |
| Duxbury, | 438 | 271 | 167 |
| East Bridgewater, | 469 | 254 | 215 |
| Halifax, | 134 | 81 | 53 |
| Hanover, | 234 | 165 | 69 |
| Hanson, | 73 | 39 | 34 |
| Hingham, | 609 | 233 | 376 |
| Hull, | 17 | 2 | 15 |
| Kingston, | 239 | 132 | 107 |
| Marion, | – | – | – |
| Marshfield, | 207 | 119 | 88 |
| Middleborough, | 715 | 437 | 278 |
| North Bridgewater, | 771 | 395 | 376 |
| Pembroke, | 228 | 122 | 106 |
| Plymouth, | 830 | 450 | 380 |
| Plympton, | 166 | 52 | 114 |
| Rochester, | 441 | 203 | 238 |
| Scituate, | 242 | 173 | 69 |
| South Scituate, | 244 | 101 | 143 |
| Wareham, | 391 | 127 | 264 |
| West Bridgewater, | 281 | 148 | 133 |
| 23 Towns, | 8,221 | 4,368 | 3,853 |

## COUNTY OF BARNSTABLE.

| | | | |
|---|---|---|---|
| Barnstable, | 457 | 285 | 172 |
| Brewster, | 117 | 64 | 53 |
| Chatham, | 134 | 65 | 69 |

ABSTRACT OF VOTES.

COUNTY OF BARNSTABLE—CON.

| TOWNS. | Whole No. | For. | Against. |
|---|---|---|---|
| Dennis, | 164 | 73 | 91 |
| Eastham, | 71 | 40 | 31 |
| Falmouth, | 287 | 71 | 216 |
| Harwich, | 120 | 37 | 83 |
| Orleans, | 92 | 16 | 76 |
| Provincetown, | 231 | 123 | 108 |
| Sandwich, | 449 | 191 | 258 |
| Truro, | 73 | 28 | 45 |
| Wellfleet, | 98 | 38 | 60 |
| Yarmouth, | 220 | 32 | 188 |
| 13 Towns, | 2,513 | 1,063 | 1,450 |

COUNTY OF NANTUCKET.

| | | | |
|---|---|---|---|
| Nantucket, | 683 | 348 | 335 |

COUNTY OF DUKES COUNTY.

| | | | |
|---|---|---|---|
| Chilmark, | 78 | 58 | 20 |
| Edgartown, | 250 | 108 | 142 |
| Tisbury, | 174 | 62 | 112 |
| 3 Towns, | 502 | 228 | 274 |

RECAPITULATION.

| COUNTIES. | Whole No. | For. | Against. |
|---|---|---|---|
| Suffolk, | 10,857 | 3,977 | 6,880 |
| Essex, | 16,327 | 8,567 | 7,760 |
| Middlesex, | 20,804 | 10,755 | 10,049 |
| Worcester, | 20,786 | 13,453 | 7,333 |
| Hampshire, | 5,973 | 2,729 | 3,244 |
| Hampden, | 7,208 | 3,986 | 3,222 |
| Franklin, | 5,628 | 3,201 | 2,427 |
| Berkshire, | 7,117 | 4,006 | 3,111 |
| Norfolk, | 9,480 | 4,569 | 4,911 |
| Bristol, | 9,429 | 5,166 | 4,263 |
| Plymouth, | 8,221 | 4,368 | 3,853 |
| Barnstable, | 2,513 | 1,063 | 1,450 |
| Nantucket, | 683 | 348 | 335 |
| Dukes County, | 502 | 228 | 274 |
| 14 Counties, | 125,528 | 66,416 | 59,112 |

# CONSTITUTIONAL PROPOSITIONS

*Adopted by the Convention of Delegates, assembled at Boston, on the first Wednesday of May, A. D. 1853, and submitted to the People for their Ratification, with an Address to the People of Massachusetts.**

The Convention presented the following Propositions, which were submitted to the People, Nov. 14, 1853.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-Three.

## RESOLVES.

In the Convention of the Delegates of the people assembled in Boston, on the first Wednesday of May, in the year 1853, for the purpose of revising and amending the Constitution of this Commonwealth.

*Resolved*, That the revised Constitution, proposed by said Convention, be submitted to the people of the Commonwealth for their ratification and adoption, in the manner following, viz.:—

I. The Preamble; A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts; The Frame of Government, with its Preamble and Chapters numbered One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, and Fourteen, entitled, respectively—General Court,—Senate,—House of Representatives,—Governor,—Lieutenant-Governor,—Council,—Secretary,—Treasurer, Attorney-General, Auditor, District-Attorney, and County Officers,—Judiciary Power,—Qualifications of Voters and Elections,—Oaths and Subscriptions,—Militia,—The University at Cambridge, the School Fund and the Encouragement of Literature,—Miscellaneous Provisions,—Revisions and Amendments of the Constitution—as a distinct Proposition, numbered "One."

If this proposition, so submitted, shall be ratified and adopted by a majority of the legal voters of the Commonwealth, present and voting thereon, at meetings duly called, then the same shall be the Constitution of the Commonwealth of Massachusetts.

II. The provision respecting the granting of the writ of Habeas Corpus, as a Proposition, numbered "Two."

If this proposition be ratified and adopted, it shall be an addition to the provision respecting the Habeas Corpus.

III. The provision respecting the rights of juries in criminal trials, as a Proposition, numbered "Three."

If this proposition be ratified and adopted, it shall be an addition to the article in the Declaration of Rights, respecting the rights of persons charged with crimes.

IV. The provision respecting claims against the Commonwealth, as a Proposition, numbered "Four."

If this proposition be ratified and adopted, it shall be an addition to Article XI., of the Declaration of Rights.

V. The provision respecting imprisonment for debt, as a Proposition, numbered "Five."

If this proposition be adopted, it shall be an addition to the Article in the Declaration of Rights, respecting excessive bail and fines.

VI. The provision respecting sectarian schools, as a Proposition, numbered "Six."

If this proposition be ratified and adopted, it shall be an addition to Article IV. of Chapter XII., entitled, "The University at Cambridge, The School Fund, and The Encouragement of Literature." If proposition numbered "One" shall not be adopted, the proposition numbered "Six," shall be added as an amendment to the Constitution.

VII. The provision respecting corporations, as a Proposition, numbered "Seven."

VIII. The provision respecting banks and banking, as a Proposition, numbered "Eight."

If the Propositions numbered "Seven" and "Eight" be ratified and confirmed, they shall be added as separate articles, or if either of them be ratified and confirmed, as an article in Chapter XIII., entitled "Miscellaneous Provisions."

If Proposition numbered "One" be not ratified and confirmed, they shall be added as amendments to the Constitution.

*Resolved*, That at the meetings for the election of Governor, Senators, and Representatives to the General Court, to be holden on the second Monday of November, in the year one thousand eight

* Amendments adopted by the Convention, which stand as separate articles or paragraphs, are enclosed in brackets, to distinguish them from existing provisions of the Constitution. Where an amendment has been made, by adding words to an article or paragraph in the existing Constitution, the amendment is printed in *Italics*.

hundred and fifty-three, the qualified voters of the several towns and cities shall vote by ballot upon each of the propositions aforesaid, for or against the same, which ballots shall be inclosed within sealed envelopes, according to the provisions of an Act of this Commonwealth, passed on the twenty-second day of May, in the year eighteen hundred and fifty-one, and an Act passed the twentieth day of May, in the year eighteen hundred and fifty-two, and no ballots not so inclosed shall be received. And said votes shall be received, sorted, counted, declared, and recorded, in open meeting, in the same manner as is by law provided in reference to votes for governor, and a true copy of the record of said votes, attested by the selectmen and town clerk of each of the several towns, and the mayor and aldermen and city clerk of each of the several cities, shall be sealed up by said selectmen and mayor and aldermen, and directed to the Secretary of the Commonwealth, with a superscription expressing the purport of the contents thereof, and delivered to the sheriff of the county within fifteen days after said meetings, to be by him transmitted to the secretary's office, on or before the third Monday of December next; or, the said selectmen and mayor and aldermen shall themselves transmit the same to the secretary's office, on or before the day last aforesaid.

*Resolved*, That the Secretary shall deliver said copies, so transmitted to him, to a Committee of this Convention, consisting of the President of the Convention, and twenty other members, to be by him designated, who shall assemble at the State House, on the third Monday of December next, and open the same, and examine and count the votes so returned; and if it shall appear that either of said propositions has been adopted by a majority of votes, then the proposition so adopted shall become and be either the whole or a portion of the Constitution of this Commonwealth, as hereinbefore provided, and the said Committee shall promulgate the results of said votes upon each of said propositions, by causing the same to be published in those newspapers in which the laws are now published; and shall also notify the Governor and Legislature, as soon as may be, of the said results; and the Governor shall forthwith make public proclamation of the fact of the adoption of either or all of said propositions, as the whole or as parts of the Constitution of this Commonwealth.

*Resolved*, That each of said propositions shall be considered as a whole by itself, to be adopted in the whole, or rejected in the whole. And every voter shall vote on each proposition, by its appropriate number, indicating upon his ballot the subject of the proposition, and expressing in writing or printing, opposite to each proposition, the word Yes or No; but the propositions shall all be written or printed on one ballot, in substance, as follows:—

Constitutional Propositions.

Shall Proposition Number One, containing the *Preamble, Declaration of Rights and Frame of Government*, stand as the Constitution of the Commonwealth of Massachusetts? Yes or No.

Shall Proposition Number Two, respecting the *Habeas Corpus*, stand as part of the Constitution? - - - - - - Yes or No.

Shall Proposition Number Three, respecting the *Rights of Juries*, stand as part of the Constitution? - - - - - - Yes or No.

Shall Proposition Number Four, respecting *Claims against the Commonwealth*, stand as part of the Constitution? - - - - Yes or No.

Shall Proposition Number Five, respecting *Imprisonment for Debt*, stand as part of the Constitution? - - - - - - Yes or No.

Shall Proposition Number Six, respecting *Sectarian Schools*, stand as part of the Constitution? - - - - - - Yes or No.

Shall Proposition Number Seven, respecting the *Creation of Corporations*, stand as part of the Constitution? - - - - Yes or No.

Shall Proposition Number Eight, respecting the *Formation of Banks*, and requiring *Security for Bank Bills*, stand as part of the Constitution? - - - - - - Yes or No.

*Resolved*, That a printed copy of these resolutions, with the several constitutional propositions annexed, shall be attested by the President and Secretaries of the Convention, and transmitted by them, as soon as may be, to the selectmen of each town, and the mayor and aldermen of each city, in the Commonwealth, whose duty it shall be to insert a proper article in reference to the voting upon said propositions, in the warrant calling the meetings aforesaid, on the second Monday of November next.

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## Proposition Number One.

### CONSTITUTION,

*Or Form of Government of the Commonwealth of Massachusetts.*

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, ac-

knowledging, 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.

A declaration

*Of the Rights of the Inhabitants of the Commonwealth of Massachusetts.*

Article 1. 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.

Art. 2. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

Art. 3. 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.

Art. 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.

Art. 5. 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.

Art. 6. No man, nor corporation, nor association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

Art. 7. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

Art. 8. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods, and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Art. 9. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

Art. 10. 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: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. 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.

Art. 11. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Art. 12. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed, in this Commonwealth, in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

Art. 13. 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. 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.

Art. 14. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

Art. 15. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

Art. 16. 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 practised, 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.

Art. 17. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

Art. 18. The people have a right to keep and to bear arms for the common defence: and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

Art. 19. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

Art. 20. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Art. 21. 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 in such particular cases only as the Legislature shall expressly provide for.

Art. 22. The freedom of deliberation, speech and debate, in either House of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Art. 23. The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Art. 24. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in in the Legislature.

Art. 25. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Art. 26. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

Art. 27. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Art. 28. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

Art. 29. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

Art. 30. 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 *by tenures established by the Constitution, and* should have honorable salaries, *which shall not be diminished during their continuance in office.*

Art. 31. 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 power, or either of them: 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.

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## THE FRAME OF GOVERNMENT.

The people inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body politic or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

### Chapter I.

*General Court.*

Article 1. The department of legislation shall be styled the General Court of Massachusetts. It shall consist of two branches, a Senate and a House of Representatives, each of which shall have a negative upon the other.

Art. 2. The political year shall begin on the first Wednesday in January; and the General Court shall assemble every year on the said first Wednesday in January, and shall be dissolved on the day next preceding the first Wednesday in January following, without any proclamation or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the governor.

[Art. 3. The compensation of members of the General Court shall be established by standing laws; but no act increasing the compensation shall apply to the General Court which passes such act; and no compensation shall be allowed for attendance of members at any one session for a longer time than one hundred days.]

Art. 4. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal: and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two-thirds of the said Senate or House of Representatives, *present*, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but, in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor, within five days after it shall have been presented *to him*, the same shall have the force of a law.

But if any bill or resolve shall be objected to and not approved by the governor, and if the General Court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution, such bill or resolve shall not become a law, nor have force as such.

Art. 5. The General Court shall forever have 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, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixt; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

[Art. 6. The General Court shall have power to make laws regulating marriage, divorce and alimony, but shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract.]

Art. 7. 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; and to name and settle annually, or provide, by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom

are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose, and levy, reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.]

Art. 8. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such power, privileges and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards, or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings: *provided*, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: *and provided, also*, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

Art. 9. Each branch of the General Court shall have authority to punish, by imprisonment, every person, not one of its members, who shall be guilty of disrespect thereto, by any disorderly or contemptuous behavior, in its presence; or who, in the town or city where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members; or assault any of them for anything said or done in its session; or shall assault, or arrest, any witness, or other person, ordered to attend it, in his way in going, or returning; or who shall rescue any person arrested by its order: *provided*, that no imprisonment, on its warrant or order, for either of the above described offences, shall be for a term exceeding thirty days; and the governor and Council shall have the same authority to punish in like cases. And no member, during his going to, returning from, or attending, the General Court, shall be arrested, or held to bail, on *mesne process*.

Art. 10. Each branch of the General Court may try, and determine all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

Art. 11. Each branch shall be the final judge of the elections, returns, and qualifications, of its members, as pointed out in the Constitution; shall choose a presiding officer from among its members; appoint its other officers; and settle its rules and orders of proceeding; and shall have power to adjourn, *provided*, such adjournment shall not exceed *three* days at a time.

Art. 12. And whereas the elections appointed to be made by this Constitution, on the first Wednesday in January annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed.

[Art. 13. In all elections by the General Court, or either branch thereof, a majority of votes shall be required, and the members shall vote *viva voce*.]

Art. 14. The enacting style, in making and passing all acts, statutes and laws, shall be: Be it enacted by the General Court of Massachusetts.

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## Chapter II.

### *Senate.*

[Article 1. There shall be annually elected by the inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be senators, for the year ensuing their election; and the Senate shall be the first branch of the General Court. For this purpose, the General Court, holden next after the adoption of this Constitution, and next after each decennial census thereafter, shall divide the Commonwealth into forty districts, composed of contiguous territory, and as nearly equal in population as may be: *provided*, that no town or ward of a city be divided therefor. Each district shall be entitled to elect one senator, who shall have been an inhabitant of this Commonwealth for five years immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen.]

Art. 2. There shall be a meeting on the *Tuesday next after the first Monday in November*, annually, forever, of the inhabitants of each town and city in this Commonwealth, to be called and warned in due course of law, at least seven days before the day of *such* meeting, for the purpose of electing senators; and at such meetings every qualified voter shall have a right to give in his vote for a senator for the district of which he is an inhabitant.

The selectmen of the several towns shall preside at the town meetings impartially; and shall

receive the votes of all the inhabitants of such towns present and qualified to vote for a senator, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and, in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription expressing the purport of the contents thereof, and delivered by the town clerk of said towns to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday in January annually; or it shall be delivered into the Secretary's office seventeen days at least before the said first Wednesday in January; and the sheriff of each county shall deliver all such certificates, by him received, into the Secretary's office, seventeen days before the said first Wednesday in January.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, shall have the same privilege of voting for a senator, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same Tuesday next after the first Monday in November, at such place in the plantations respectively as the assessors thereof shall direct; which assessors shall have like authority for notifying the *voters*, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated, (qualified as aforesaid,) shall have the privilege of giving in their votes for a senator, in the town where the inhabitants of such unincorporated places shall be assessed, and be notified of the place of meeting by the selectmen of the said town for that purpose, accordingly.

[Art. 3. The Governor and Council shall, as soon as may be, examine the returned copies of the record provided for in article second of this chapter, and ascertain who shall have received the largest number of votes in each of the several senatorial districts, and the person who has so received the largest number of votes in each of said districts shall be a senator for the following political year; and the governor shall cause each of said persons, so appearing to be elected, to be notified at least fourteen days before the first Wednesday in January of each year, to attend on that day, and take his seat accordingly.

Art. 4. Not less than twenty-one members shall constitute a quorum for doing business; but a less number may organize, adjourn from day to day, and compel the attendance of absent members.]

Art. 5. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives against any officer or officers of the Commonwealth, for misconduct and maladministration in their offices; but, previous to the trial of every impeachment, the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence Their judgment, however, shall not extend farther than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

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## Chapter III.

*House of Representatives.*

Article 1. There shall be, in the legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Art. 2. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing [less than one thousand inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing one thousand inhabitants and less than four thousand, may elect one representative. Every town containing four thousand inhabitants and less than eight thousand, may elect two representatives. Every town containing eight thousand inhabitants and less than twelve thousand, may elect three representatives. Every city or town containing twelve thousand inhabitants, may elect four representatives. Every city or town containing over twelve thousand inhabitants, may elect one additional representative for every four thousand inhabitants it shall contain over twelve thousand. Any two towns, each containing less than one thousand inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having one thousand inhabitants. And this apportionment shall be based upon the census of the year one thousand eight hundred and fifty, until a new census shall be taken.

Art. 3. The Senate at its first session after this Constitution shall have been adopted, and at its first session after the next State census shall have been taken, and at its first session next after each decennial State census thereafterwards, shall apportion the number of representatives to which each town and city shall be entitled, and shall cause the same to be seasonably published; and in all apportionments after the first, the numbers which shall entitle any town or city, to two, three, four, or more representatives, shall be increased or diminished in the same proportion as the population of the whole Commonwealth shall have increased or decreased since the last preceding apportionment.

Art. 4. No town hereafter incorporated, con-

taining less than fifteen hundred inhabitants, shall be entitled to choose a representative.

Art. 5. Each city in this Commonwealth, shall be divided, by such means as the Legislature may provide, into districts of contiguous territory, as nearly equal in population as may be, for the election of representatives, which districts shall not be changed oftener than once in five years: *provided, however*, that no one district shall be entitled to elect more than three representatives.]

Art. 6. The members of the House of Representatives shall be chosen on *the Tuesday next after the first Monday in November*, annually; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no farther: but in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

Art. 7. The House of Representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution.

Art. 8. Every member of the House of Representatives shall have been for one year, at least, next preceding his election, an inhabitant of the town he shall be chosen to represent.

Art. 9. The House of Representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the Senate.

Art. 10. All money bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Art. 11. Not less than *one hundred* members of the House of Representatives shall constitute a quorum for doing business.

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## Chapter IV.

### *Governor.*

Article 1. There shall be a supreme executive magistrate, who shall be styled, The Governor of the Commonwealth of Massachusetts.

Art. 2. The governor shall be *a citizen of Massachusetts*, and shall be chosen annually, *by the inhabitants of the towns and cities of this Commonwealth, on the Tuesday next after the first Monday in November*. He shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead. *And no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding.*

Art. 3. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, *on the Tuesday next after the first Monday in November*, annually, give in their votes for a governor, to the selectmen, who shall preside at such meeting, and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the first Wednesday in January; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said first Wednesday in January; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at least before the said day; and the secretary shall lay the same before the Senate and the House of Representatives, on the first Wednesday in January, to be by them examined; and in case of an election, the choice shall be by them declared and published.

Art. 4. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this Commonwealth for the time being; and the governor, with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution and the laws of the land.

Art. 5. The governor, with advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire; and in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said Court is next, at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the State.

Art. 6. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

Art. 7. The power of pardoning offences, except such as persons may be convicted of before the Senate, by an impeachment of the House, shall be in the governor, by and with the advice of Council; but no charter of pardon, granted by the governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Art. 8. Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the

governor, with the consent of the Council, upon the address of both Houses of the General Court.

Art. 9. Coroners shall be nominated and appointed by the governor, by and with the advice and consent of the Council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

Art. 10. No moneys shall be issued out of the treasury of this Commonwealth and disposed of, (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon,) but by warrant under the hand of the governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

Art. 11. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care, respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

Art. 12 As the public good requires that the governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

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## Chapter V.

### *Lieutenant-Governor.*

Article 1. There shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, who shall be qualified in the same manner with the governor; and the day and manner of his election, the qualifications of the voters, the return of the votes, and the declaration of the election, shall be the same as in the election of a governor.

[And the lieutenant-governor shall hold his office for one year next following the first Wednesday of January, and until another is chosen and qualified in his stead.]

Art. 2. The governor, and in his absence, the lieutenant-governor, shall be president of the Council, but shall have no vote in Council; and the lieutenant-governor shall always be a member of the Council, except when the chair of the governor shall be vacant.

Art. 3. Whenever, by reason of sickness or absence from the Commonwealth, or otherwise, the governor shall be unable to perform his official duties, the lieutenant-governor, for the time being, shall have and exercise all the powers and authorities, and perform all the duties of governor; *and* whenever the chair of the governor shall be vacant, by reason of his resignation, death, or removal from office, the lieutenant-governor *shall be governor of the Commonwealth.*

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## Chapter VI.

### *Council.*

Article 1. There shall be a Council for advising the governor in the executive part of the government, to consist of *eight* persons besides the lieutenant-governor, whom the governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

[Art. 2. Eight councillors shall be annually chosen by the people; and for that purpose the State shall be divided by the General Court into eight districts, each district to consist of five contiguous senatorial districts, and entitled to elect one councillor, who shall hold his office for one year next following the first Wednesday in January, and until a successor is chosen and qualified in his stead.]

Art. 3. No person shall be elected a councillor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election.

[Art. 4. The day and manner of the election of councillors, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be declared to be elected.

Art. 5. No councillor, during the time for which he is elected, shall be appointed on any commission or to any place and receive compensation therefor.]

Art. 6. The councillors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant-governor.

Art. 7. The resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and any member of the Council may insert his opinion contrary to the resolution of the majority. This record *shall always be subject to public examination*, and may be called for by either House of the Legislature.

Art. 8. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute all and every such acts, matters and things, as the governor or the lieutenant-governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

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## Chapter VII.

*Secretary, Treasurer, Attorney-General, Auditor, District-Attorney, and County Officers.*

[Article 1. The secretary, treasurer, auditor and attorney-general, shall be chosen by the people, annually on the Tuesday next after the first Monday in November; and they shall hold their offices, respectively, for one year next following the first Wednesday in the succeeding January, and until their successors are chosen and qualified in their stead.

The day and manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of governor.]

Art. 2. No man shall be eligible as treasurer, more than five years successively.

Art. 3. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and Council, the Senate and House of Representatives, in person, or by his deputies, as they shall respectively require.

[Art. 4. Judges of probate, registers of probate, sheriffs, clerks of the courts, commissioners of insolvency, district-attorneys, registers of deeds, county treasurers, and county commissioners, shall be elected triennially by the people of their respective counties and districts, on the Tuesday next after the first Monday in November, and shall hold their offices, respectively, for three years next following the first Wednesday in the succeeding January, and until their respective successors are chosen and qualified in their stead.

The manner of their election, the qualifications of the voters, the return of the votes, and the declaration of the elections, shall be the same as are required in the election of senators; and the person having the highest number of votes shall be elected.]

## Chapter VIII.

*Judiciary Power.*

[Article 1. The judicial power of the Commonwealth shall be vested in a Supreme Judicial Court, and such other courts as the legislature may from time to time establish.]

Art. 2. 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 *for the term of ten years*, excepting such concerning whom there is different provision made in this Constitution. *And upon the expiration of such term they may be reappointed;* and all judicial officers *for whose appointment a different provision is not made in this Constitution, shall be nominated and appointed by the governor, by and with the advice and consent of the Council, and they* may be removed by the governor, with consent of the Council, upon the address of both Houses of the Legislature.

[Art. 3. The present justices of the Supreme Judicial Court shall hold their offices according to their respective commissions; and the present justices of the Court of Common Pleas shall hold their offices by the same tenure, while the law establishing the said Court of Common Pleas shall continue. All nominations of judicial officers, whose term of office is by this Constitution limited to ten years, shall be publicly announced at least seven days before their appointment; and no person who shall have been commissioned after the tenth day of August, in the year one thousand eight hundred and fifty-three, shall hold by any longer tenure of office than the term of ten years.

Art. 4. Neither the governor and Council, nor the two branches of the Legislature, or either of them, shall hereafter propose questions to justices of the Supreme Judicial Court, and require their opinions thereon.]

Art. 5. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the Legislature shall from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

[Art. 6. Justices of the peace, justices of the peace and quorum, justices of the peace throughout the Commonwealth, and commissioners to qualify civil officers, may be appointed by the governor and Council for a term of seven years; and upon the expiration of any commission, the same may be renewed; and those now in office shall continue therein according to the tenure of their respective commissions: *provided*, that the jurisdiction of the justices named in this article, shall not extend to the hearing or trial of any causes, or the issuing of warrants in criminal cases.

Art. 7. Trial justices shall be elected by the legal voters of the several towns and cities, where, at the time of such election there is no Police Court established by law, who shall hold their

offices for a term of three years, and have the same jurisdiction, powers, and duties, as are now exercised by justices of the peace, or such as may hereafter be established by law. Every city or town, authorized as herein provided, shall elect a trial justice, and may elect one additional for each two thousand inhabitants therein, according to the next preceding decennial census: *provided, however*, that any trial justice who shall remove from the city or town in which he was elected shall thereby vacate his office.

Art. 8. Justices and clerks of the Police Courts of the several cities and towns of the Commonwealth shall be elected by the legal voters thereof, respectively, for a term of three years.]

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## Chapter IX.

*Qualifications of Voters, and Elections.*

Article 1. Every male citizen, of twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of *any national officer, or any State officer required by this Constitution to be elected by the people, shall have a right to vote in such election; and no other person shall have such right.*

[Art. 2. All ballots required by law to be given at any national, state, county, district, or city election, including elections for representatives and trial justices, justices and clerks of Police Courts, shall be deposited in sealed envelopes of uniform size and appearance, to be furnished by the Commonwealth.

Art. 3. Lists of the names of qualified voters shall be used at all elections required by this Constitution. They shall be made out and used in such manner as shall be by law provided. The presiding officers at such elections shall receive the votes of all persons whose names are borne on such lists, and shall not be held answerable for refusing the votes of any persons whose names are not borne thereon.

Art. 4. All meetings for the choice of national, state, county, or district officers, including representatives, trial justices, clerks and justices of Police Courts, by the people, shall be held on the Tuesday next after the first Monday in November, annually; and they shall be called by the mayor and aldermen of the cities, and the selectmen of the towns, and warned in due course of law. The manner of calling and holding public meetings in cities, for the election of officers under this Constitution, and the manner of returning the votes given at such meetings, shall be as now prescribed, or as shall hereafter be prescribed by the Legislature.

Art. 5. A majority of all the votes given shall be necessary to the election of governor, lieutenant-governor, secretary, treasurer, auditor, and attorney-general, of the Commonwealth, until otherwise provided by law, but no such law providing that such officers, or either of them, or representatives to the General Court, shall be elected by plurality, instead of a majority of votes given, shall take effect until one year after its passage; and if at any time after any such law shall have taken effect, it shall be repealed, such repeal shall not become a law until one year after the passage of the repealing act; and in the absence of any such law, if at any election of either of the above-named officers, except the representatives to the General Court, no person shall have a majority of the votes given, the House of Representatives shall elect two out of three persons then eligible, who had the highest number of votes, if so many shall have been voted for, and return the persons so elected to the Senate, from whom the Senate shall choose one who shall be the officer thus to be elected.

Art. 6. A majority of votes shall be required in all elections of representatives to the General Court, until otherwise provided by law.

Art. 7. In the election of all city or town officers, such rule of election shall govern as the Legislature may by law prescribe.

Art. 8. In all elections of councillors and senators, and in all elections of county or district officers, the person having the highest number of votes shall be elected.

Art. 9. Whenever, in any election where the person having the highest number of votes may be elected, there is a failure of election because two persons have an equal number of votes, subsequent trials may be had at such times as may be prescribed by the Legislature.]

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## Chapter X.

*Oaths and Subscriptions; Incompatibility of and Exclusion from Offices; Continuation of Officers; Commissions; Writs; Confirmation of Laws.*

Article 1. The following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of the Commonwealth, before he shall enter upon the duties of his office, to wit:—

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof; and that I will faithfully and impartially discharge and perform all the duties incumbent on me as [here insert the office], according to the best of my abilities and understanding, agreeably to the Constitution and laws of the Commonwealth. So help me God."

[*Provided*, that when any person, chosen or appointed as aforesaid, shall be conscientiously scrupulous of taking and subscribing an oath, and shall for that reason decline taking the above oath, he shall make and subscribe his affirmation in the foregoing form, omitting the word "swear," and substituting the word "affirm;" and omitting the words "So help me God," and subjoining instead thereof the words "And this I do under the pains and penalties of perjury."]

And the said oaths or affirmations shall be taken and subscribed, by the governor and lieutenant-governor before the president of the Senate, in presence of the two Houses *in convention; and by councillors before the president of the Senate and in presence of the Senate;* and by the senators and representatives before the governor and Council for the time being; and by the residue of the officers aforesaid before such persons, and in such manner, as shall from time to time be prescribed by law.

Art. 2. No governor, lieutenant-governor, or judge of the Supreme Judicial Court *or Court of Common Pleas,* shall hold any other office under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the judges of the said courts may hold the offices of justices of the peace through the State; nor shall they hold any other office, or receive any pension or salary from any other State, or government, or power whatever, *except that they may be appointed to take depositions, or acknowledgments of deeds, or other legal instruments, by the authority of other States or countries.*

[No person shall hold or exercise at the same time more than one of the following offices, to wit: the office of governor, lieutenant-governor, senator, representative, judge of the Supreme Judicial Court, or Court of Common Pleas, secretary of the Commonwealth, attorney-general, treasurer, auditor, councillor, judge of probate, register of probate, register of deeds, sheriff or his deputy, clerk of the Supreme Judicial Court, or Court of Common Pleas, clerk of the Senate or House of Representatives; and any person holding either of the above offices shall be deemed to have vacated the same by accepting a seat in the congress of the United States, or any office under the authority of the United States, the office of postmaster excepted. And no person shall be capable of holding at the same time more than two offices, which are held by appointment of the governor, or governor and Council, or the Senate, or the House of Representatives, military offices, and the offices of justices of the peace, justices of the peace and quorum, notaries public, and commissioners to qualify civil officers, excepted.]

Art. 3. And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

Art. 4. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

Art. 5. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue, and be signed by the clerk of such court.

Art. 6. All the laws, which have heretofore been adopted, used, and approved in the Province, Colony, State or *Commonwealth* of Massachusetts, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

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## Chapter XI.

### *Militia.*

Article 1. The governor shall be the commander-in-chief of the army and navy *of the Commonwealth, and of the Militia thereof, excepting when these forces shall be actually in the service of the United States; and shall have power to call out any part of the military force to aid in the execution of the laws, to suppress insurrection, and to repel invasion.*

[Art. 2. All citizens of this Commonwealth liable to military service, except such as may by law be exempted, shall be enrolled in the militia, and held to perform such military duty as by law may be required.

Art. 3. The militia may be divided into convenient divisions, brigades, regiments, squadrons, battalions, and companies; and officers with appropriate rank and titles may be elected to command the same. And the discipline of the militia shall be made to conform, as nearly as practicable, to the discipline of the army of the United States.

Art. 4. The governor shall appoint an adjutant-general, a quartermaster-general, and such other general staff-officers as shall be designated by law; who shall be commissioned by him for the term of one year, and until their successors shall be commissioned and qualified. And the adjutant-general and quartermaster-general shall have salaries fixed by law, which shall be in full for all services rendered by them in their several offices.

Art. 5. The major-generals shall be elected by the votes of the brigadier-generals and field-officers of the brigades, regiments, squadrons, and battalions of the respective divisions.

Art. 6. The brigadier-generals shall be elected by the votes of the field-officers of the regiments, squadrons, and battalions, and captains of companies, of the respective brigades.

Art. 7. The field-officers of regiments, squadrons, and battalions, shall be elected by the votes of the captains and subalterns of companies of the respective regiments, squadrons, and battalions.

Art. 8. The captains and subalterns shall be elected by the members of the respective companies.

Art. 9. All elections of military officers shall be by a majority of the written votes of those present and voting, and no person, within the description of a voter as hereinbefore specified, shall be disqualified by reason of his being a minor.

Art. 10. The Legislature shall prescribe the time and manner of convening the electors here-

inbefore named, of conducting the elections, and of certifying to the governor the names of the officers elected.

Art. 11. The several officers elected shall be forthwith commissioned by the governor for the term of three years from the dates of their respective commissions, and until their successors shall be commissioned and qualified.

Art. 12. If the electors of the several officers before named shall refuse or neglect to make an election, for the space of three months after legal notice of a meeting for that purpose, the governor shall appoint and commission for three years a suitable person to fill the vacant office, with the advice of the Council if the vacancy be that of a major-general, or with the advice of the major-general of the division in which the appointment is to be made, if the vacancy be of an inferior grade.

Art. 13. Major-generals, brigadier-generals, and commandants of regiments, squadrons, and battalions, shall severally appoint such staff-officers as shall be designated by law in their respective commands.

Art. 14. All non-commissioned officers, whether of staff or company, and all musicians, shall be appointed in such manner as may be prescribed by law.

Art. 15. All officers of the militia may be removed from office by sentence of court-martial, or by such other modes as may be prescribed by law.]

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## Chapter XII.

*The University at Cambridge; the School Fund; and the Encouragement of Literature.*

Article 1. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university 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 their successors in that capacity, 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, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever. *But the Legislature shall always have full power and authority, as may be judged needful for the advancement of learning, to grant any farther powers to the President and Fellows of Harvard College, or to alter, limit, annul, or restrain, any of the powers now vested in them:* provided, *the obligation of contracts shall not be impaired; and shall have the like power and authority over all corporate franchises hereafter granted, for the purposes of education, in this Commonwealth.*

Art. 2. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

Art. 3. And whereas by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said Act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; it is declared that the governor, lieutenant-governor, Council and Senate of this Commonwealth are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the overseers of Harvard College: *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.

[Art. 4. It shall be the duty of the Legislature, as soon as may be, to provide for the enlargement of the School Fund of the Commonwealth, until it shall amount to a sum not less than two millions of dollars; and the said fund shall be preserved inviolate, and the income thereof shall be annually appropriated for the aid and improvement of the common schools of the State, and for no other purpose.]

Art. 5. 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; 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.

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## Chapter XIII.

*Miscellaneous Provisions.*

Article 1. A census of the inhabitants of each city and town in the Commonwealth, on the first day of May in the year *one thousand eight hundred and fifty-five*, and on the first day of May of each tenth year thereafter, shall be taken and returned into the secretary's office, on or before the last day of the June following the said first day of May in each of said years; and while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

[Art. 2. Persons holding office by election or appointment, when this Constitution takes effect, shall continue to discharge the duties thereof until their term of office shall expire, or officers authorized to perform their duties, or any part thereof, shall be elected and qualified, pursuant to the provisions of this Constitution; when all powers not reserved to them by the provisions of this Constitution shall cease: *provided, however*, that justices of the peace, justices of the peace and of the quorum, and commissioners of insolvency, shall be authorized to finish and complete all proceedings pending before them at the time, when their powers and duties shall cease, or be altered as aforesaid. All laws in force when this Constitution goes into effect, not inconsistent therewith, shall continue in force until amended or repealed.

Art. 3. The Legislature shall provide, from time to time, the mode in which commissions or certificates of election shall be issued to all officers elected pursuant to the Constitution, except in cases where provision is made therein.

Art. 4. The governor, by and with the consent of the Council, may at any time, for incapacity, misconduct or maladministration in their offices, remove from office, clerks of courts, commissioners of insolvency, judges and registers of probate, district-attorneys, registers of deeds, county treasurers, county commissioners, sheriffs, trial justices, and justices and clerks of police courts: *provided*, that the cause of their removal be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of said officers, and appoint substitutes, who shall hold office until the final action upon the question of removal.

Art. 5. Whenever a vacancy shall occur in any elective office, provided for in this Constitution, except that of governor, lieutenant-governor, councillor, senator, member of the House of Representatives, and town and city officers, the governor for the time being, by and with the advice and consent of the Council, may appoint some suitable person to fill such vacancy, until the next annual election, when the same shall be filled by a new election, in the manner to be provided by law: *provided, however*, that trial justices shall not be deemed to be town officers for this purpose.

Art. 6. All elections provided to be had under this Constitution shall, unless otherwise provided, be first held on the Tuesday next after the first Monday of November, in the year one thousand eight hundred and fifty-four.

Art. 7. This Constitution shall go into operation on the first Monday in February, in the year one thousand eight hundred and fifty-four.

Art. 8. The terms of all elective officers, not otherwise provided for in this Constitution, shall commence on the first Wednesday in January next after their election.]

Art. 9. In order to remove all doubt of the meaning of the word "inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation, where he dwelleth, or hath his home.

Art. 10. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

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## Chapter XIV.

*Revision and Amendments of the Constitution.*

[Article 1. A Convention to revise or amend this Constitution may be called and held in the following manner: At the general election in the year one thousand eight hundred and seventy-three, and in each twentieth year thereafter, the qualified voters in State elections shall give in their votes upon the question, "Shall there be a Convention to revise the Constitution?" which votes shall be received, counted, recorded, and declared, in the same manner as in the election of Governor; and a copy of the record thereof shall, within one month, be returned to the office of the Secretary of State, who shall, thereupon, examine the same, and shall officially publish the number of yeas and nays given upon said question, in each town and city, and if a majority of said votes shall be in the affirmative, it shall be

deemed and taken to be the will of the people that a Convention shall meet accordingly; and, thereafter, on the first Monday of March ensuing, meetings shall be held, and delegates shall be chosen, in all the towns, cities, and districts, in the Commonwealth, in the manner and number then provided by law for the election of the largest number of representatives which the towns, cities, and districts shall then be entitled to elect in any year of that decennial period. And such delegates shall meet in Convention at the State House, on the first Wednesday of May next ensuing, and when organized, shall have all the powers necessary to execute the purpose for which such Convention was called; and may establish the compensation of its officers and members, and the expense of its session, for which the Governor, with the advice and consent of the Council, shall draw his warrant on the treasury. And if such alterations and amendments, as shall be proposed by the Convention, shall be adopted by the people voting thereon in such manner as the Convention shall direct, the Constitution shall be deemed and taken to be altered or amended accordingly. And it shall be the duty of the proper officers, and persons in authority, to perform all acts necessary to carry into effect the foregoing provisions.

Art. 2. Whenever towns or cities containing not less than one-third of the qualified voters of the Commonwealth, shall at any meeting for the election of State officers, request that a Convention be called to revise the Constitution, it shall be the duty of the legislature, at its next session, to pass an Act for the calling of the same, and submit the question to the qualified voters of the Commonwealth, whether a Convention shall be called accordingly: *provided*, that nothing herein contained shall impair the power of the Legislature to take action for calling a Convention, without such request, as heretofore practised in the Commonwealth.]

Art. 3. If, at any time hereafter, any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the House of Representatives, present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

[Art. 4. The Legislature which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and fifty-five, shall divide the State into forty single districts for the choice of senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State into single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year one thousand eight hundred and sixty-six, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year one thousand eight hundred and fifty-six, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution in place of the provisions contained in this Constitution for the apportionment of senators and representatives.]

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## Proposition Number Two.

The writ of *habeas corpus* shall be granted as of right in all cases in which a discretion is not especially conferred upon the court by the Legislature; but the Legislature may prescribe forms of proceeding preliminary to the obtaining of the writ.

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## Proposition Number Three.

In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict, of guilty or not guilty, to determine the law and the facts of the case, but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction.

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## Proposition Number Four.

Every person having a claim against the Commonwealth, ought to have a judicial remedy therefor.

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## Proposition Number Five.

No person shall be imprisoned for any debt hereafter contracted, unless in cases of fraud.

## Proposition Number Six.

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.

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## Proposition Number Seven.

The Legislature shall not create corporations by special act when the object of the incorporation is attainable by general laws.

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## Proposition Number Eight.

The Legislature shall have no power to pass any act granting any special charter for banking purposes, or any special act to increase the capital stock of any chartered bank; but corporations may be formed for such purposes, or the capital stock of chartered banks may be increased, under general laws.

The Legislature shall provide by law for the registry of all notes or bills authorized by general laws to be issued or put in circulation as money; and shall require ample security for the redemption of such notes in specie.

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Commonwealth of Massachusetts.

*In Convention*, August 1, 1853.

A true copy of the Resolutions adopted by the Convention and of the several Constitutional Propositions annexed. Attest:

N. P. BANKS, Jr., *President.*

W. S. Robinson, } *Secretaries.*
Jas. T. Robinson, }

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Commonwealth of Massachusetts.

*In Convention*, August 1, 1853.

The Committee which was directed to prepare an Address to the People of Massachusetts, ask leave to report the form of such Address.

For the Committee,

GEO. S. BOUTWELL, *Chairman.*

## ADDRESS.

*To the People of Massachusetts :—*

The Convention of Delegates, assembled by your authority, and directed to revise the Constitution of the Commonwealth, has now closed its labors; and it seeks only to commend and commit the result to your consideration and final judgment. The necessity for the Convention was great, and its labors have been arduous and protracted. As your delegates, we have sought for the principles of freedom in the ancient institutions of the State; but we have thought it wise also to accept the teachings and experience of nearly a century of independent existence. It has then been our purpose to unite in one system of organic law the principles of American republican institutions, and the experiences of other free States, all contemplated in the light derived from the history and usages of Massachusetts.

And first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments, much of the original text is already annulled, and it is only by a careful and critical analysis and comparison that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed—"that every man may at all times find his security in them." We have not, then, thought it wise, or even proper, to preserve, as a part of the Constitution, provisions which have long since been annulled; nor do we feel justified in proposing new specific amendments whose adoption will render the fundamental law of the Commonwealth more difficult to be understood and less certain in its requirements.

We have, therefore, taken what remains unchanged of the Constitution of 1780, and the subsequent amendments, preserving the original language wherever it appeared practicable, as the basis of a new Constitution, and incorporated therewith such of the resolutions of this Convention as are necessary to give to the whole, at once, a comprehensive and concise character. This has been our purpose; and if our view of duty is correct, we are entirely justified in submitting so much of our work as will give to the people of Massachusetts a complete system of organic law, as one proposition, for your adoption and ratification. It is undoubtedly true, that when amendments are specific and not numerous, they should be separately submitted to the judgment of the people; but this mode becomes impracticable in

the formation of a new government, or the thorough revision of an old one. Our attention has been necessarily directed to every provision of the Constitution, and but one chapter is preserved in its original form. It only remained for us either to submit our work, to be added to the old Constitution as specific amendments, with the conviction that their ratification would render your form of government more complicated than it now is, or else to embody all of the old and the new that appears necessary to the safe and harmonious action of the system, and present it as *The Constitution of Massachusetts*.

This we now do, and we invite you to consider that, while government is essential to the safety and happiness of each individual, it must necessarily happen that it cannot be in every part alike acceptable to all. "We may not expect," said the founders of the Commonwealth, "to agree in a perfect system of government; this is not the lot of mankind. The great end of government is to promote the supreme good of human society." We commend the new Constitution to you, not as being perfect, but as greatly to be preferred to the existing frame of government. It declares the rights and liberties essential to the freedom of the people; it contains, as we believe, a framework arranged according to reason and correct analysis, and it embodies all the fundamental provisions necessary to a just administration of every department of the government.

You will naturally examine with care the character of the changes we have proposed. We have thought it necessary to make a provision for the purpose of limiting the sessions of the General Court to one hundred days, and to require that the pay of its members shall be fixed by standing laws.

At present the members of the Senate are chosen by the several counties which elect from one to six senators, upon a general ticket. We have provided for the division of the State into forty districts, of equal population, and each entitled to elect one senator.

The basis of the House of Representatives has been a subject of careful and anxious deliberation. Differences of opinion existed among us; but a majority of more than one hundred members determined to preserve the system of town representation, under which Massachusetts has existed so long and prospered so well. We have, then, based the House of Representatives upon the municipal institutions of the State, having reference, so far as practicable, to their relative population. By the proposed system, towns containing less than one thousand inhabitants are entitled to elect a representative for the year when the valuation of estates is settled, and one in addition, annually, for five years out of every decennial period. Towns having a population of one thousand and not more than four thousand inhabitants, are entitled to elect a representative every year; towns of more than four thousand and less than eight thousand, will elect two representatives; towns of eight thousand and less than twelve thousand, will elect three representatives, while towns and cities of twelve thousand inhabitants, will elect four representatives, and one additional representative for each addition of four thousand to their population. We do not claim that this system, separately considered, is precisely equal; but if it is in some degree favorable to the rural districts, the loss sustained by the large towns and cities is in a fair measure compensated by the manifest advantages accorded to them in the constitution of the Council and the Senate. The inequality of representation between particular towns, when tested solely by population, may in some cases apparently be great; but when the rights of different interests and different sections of the Commonwealth are considered in connection with the whole system of elective government, the basis of the House cannot be deemed unequal or unjust. The Senate and Council are based upon population rather than voters, by which the inhabitants of the cities and large towns have influence in these two important departments of the government quite disproportionate to their just elective power.

No human government can attain to theoretic accuracy; and in a state where pursuits, habits, and interests are various, it certainly is not the part of wisdom to place unlimited power in the hands of any. We invite you to consider that the Governor represents the voters of the State; that the Council and Senate represent population, without any reference to voters, and as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and finally, that we have sought only to secure to the rural districts and to the agricultural and mechanical population and interests a reasonable share of power in one branch of the Legislature. This influence gives to this portion of the people power to assent to, but never to dictate, the policy of the government. The Convention of 1780 declared that "an exact representation would be impracticable even in a system of government arising from the state of nature, and much more so in a State already divided into nearly three hundred corporations." We have encountered the same difficulty, and hope that we have overcome it in our day as well as they overcame it in their day.

But our deliberations have not been confined to the proposed system. Many of your delegates are of opinion that the State should be divided into districts for the election of representatives, according to the number of voters in each. In this opinion a large majority of the Convention do not concur; but we think it our duty first to interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance whenever such a course is practicable. We have, therefore, made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then substituted for the one recommended by the Convention, if, in the judgment of the whole people, it is wise to make the change.

We have also provided that the cities and large towns shall be so districted for the choice of representatives that no district shall be entitled to elect more than three members. In the judgment of the Convention, the election of many officers on a single general ticket, is not compatible with the freedom and purity of the representative system.

The property qualification of the Governor and Lieutenant-Governor has been abolished.

The Council has been made elective by the people in single districts, and the records of that body are hereafter to be subject to public examination.

We have provided that the Attorney-General, the Secretary of the Commonwealth, the Auditor and the Treasurer, officers now appointed by the Governor, or chosen by the Legislature, shall hereafter be elected annually by the people; and that Judges of Probate, Registers of Probate, Sheriffs, Clerks of the Courts, Commissioners of Insolvency, and District-Attorneys, officers now appointed by the Executive or the Courts, shall also be elected by the people for terms of three years.

We have also provided that the Justices of the Supreme Judicial Court and of the Court of Common Pleas, hereafter appointed, shall hold their offices for the term of ten years. In a free government, the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution a Judge can only be removed by the difficult and unpleasant process of impeachment, or of address. Such remedies will be resorted to only in the most aggravated cases. Under the proposed system we have no apprehension but that faithful and competent Judges will be retained in the public service; while those whose places can be better filled by other men, will retire to private life without violence or ungracious circumstances, and scarcely with observation.

It is proposed that Justices of the Peace shall be divided into two classes. Those whose duties are chiefly ministerial, will be, as heretofore, appointed by the Governor and Council; while those intrusted with judicial authority are to be elected by the people, and to hold by a tenure of three years.

Under the original Constitution, voters and public officers were required to possess property qualifications. These have heretofore been removed in part, and we now recommend the entire abolition of the property qualification in the voter for all national and all state officers mentioned in the Constitution. The obligations of citizens to contribute to the public expenses by assessment of taxes are not in any degree changed.

Provision is also made for the secrecy of the ballot. By the ballot the citizen at the same time declares his opinion on public affairs, and asserts his equality with every other citizen.

Freedom of opinion, and freedom in the expression of opinion, are individual rights, to be limited or controlled only by a public necessity. We see no public necessity which ought to deprive the citizen of these rights, and we have therefore made provision for their protection.

We also provide, absolutely, that in many elections, persons having the highest number of votes shall be chosen. This rule has been applied principally to the elections in counties and districts, where the trouble of frequent trials is great. The Governor, Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, Treasurer, Auditor, Representatives to the General Court, and town officers, are exceptions to the rule. In case of a failure to elect either of the first six named, the election is referred to the General Court; while subsequent trials may be had for the choice of Representatives and municipal officers. We have, therefore, as we think, retained the majority rule where its application will be least burdensome to the people. At the same time we have provided that the Legislature may substitute the plurality rule whenever the public will shall demand it, with a condition that no act for that purpose shall take effect until one year after its passage. Thus we have given an opportunity to test the wisdom of the plurality system, by experience, and power to apply it to every popular election in the Commonwealth, whenever the deliberate judgment of the people shall require it.

The various provisions relating to the militia

have been revised, some important changes have been made, and that department of the government will rest more firmly than ever on a constitutional basis.

Changes are proposed concerning the University at Cambridge, and the General Court is instructed to provide means for the enlargement of the School Fund, until it shall amount to a sum not less than two millions of dollars.

Although the Constitution has always asserted, in the strongest terms, the right of the people, at all times, to alter, reform, or totally change their frame of government, yet it has been contended by some, that the operation and effect of the specific provisions for amendments, contained therein, have been such as practically to impair or render doubtful this great right. We have, therefore, thought it wise, while we recognize and retain the modes of exercising this right, practised hitherto in this Commonwealth, to introduce additional provisions, to meet possible future exigencies, and to enable the people, without controversy, to hold periodical Conventions that shall not be subject to, or restricted by, any previous or subsequent act of the Legislature.

Trusting that you will examine with care the proceedings of the Convention, and the result to which it has come, we deem it unnecessary to explain several less prominent changes proposed in the Constitution of the Commonwealth.

We also submit seven distinct amendments, which are presented separately for your ratification. Some of them are new, and all of them are independent of the frame-work of the government, and may either be adopted or rejected without disturbing the system or harmony of the Constitution. They have all, however, been sustained by decisive majorities of your delegates, and embrace important and essential principles in popular government. The formation or revision of a popular Constitution is an epoch in the history of a free people.

We are sensible of the magnitude of the trust which you have confided to us, but it is not more important than the just decision of the questions which we submit to you. We have no doubt that your decision will secure a result beneficial to Massachusetts, and, under Divine Providence, will render more and more illustrious our ancient Commonwealth.

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*In Convention*, August 1, 1853.

Read and accepted.

N. P. BANKS, Jr., *President*.

Wm. S. Robinson, } *Secretaries*.
James T. Robinson, }

# ABSTRACT

*Of the Returns of Votes on the several Constitutional Propositions submitted to the People, Nov. 14, 1853, as declared by the Committee appointed by the Convention to examine the same.*

## SUFFOLK COUNTY.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Boston, - - - - | 3,248 | 9,033 | 3,154 | 8,548 | 3,084 | 8,468 | 3,239 | 8,455 | 3,248 | 8,340 | 3,562 | 8,234 | 3,178 | 8,322 | 3,210 | 8,388 |
| Chelsea, - - - | 380 | 483 | 415 | 448 | 383 | 480 | 399 | 466 | 478 | 440 | 436 | 432 | 397 | 466 | 394 | 469 |
| North Chelsea, - - | 14 | 62 | 14 | 62 | 14 | 62 | 14 | 62 | 16 | 60 | 15 | 61 | 14 | 62 | 15 | 61 |
| Winthrop, - - - | 31 | 10 | 30 | 11 | 31 | 10 | 32 | 9 | 32 | 9 | 38 | 2 | 30 | 11 | 31 | 10 |
| 4 Towns, - - - | 3,673 | 9,588 | 3,613 | 9,069 | 3,512 | 9,020 | 3,684 | 8,992 | 3,774 | 8,849 | 4,051 | 8,729 | 3,619 | 8,861 | 3,650 | 8,928 |

## COUNTY OF ESSEX.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Amesbury, - - - | 255 | 255 | 257 | 252 | 255 | 254 | 258 | 251 | 264 | 241 | 278 | 230 | 258 | 251 | 257 | 251 |
| Andover, - - - | 341 | 381 | 342 | 381 | 329 | 391 | 345 | 377 | 349 | 373 | 352 | 370 | 344 | 378 | 343 | 380 |
| Beverly, - - - | 387 | 423 | 391 | 420 | 383 | 428 | 395 | 419 | 402 | 410 | 402 | 411 | 392 | 419 | 393 | 418 |
| Boxford, - - - | 25 | 110 | 37 | 108 | 25 | 110 | 27 | 108 | 26 | 109 | 27 | 108 | 25 | 110 | 25 | 110 |
| Bradford, - - - | 96 | 100 | 96 | 100 | 94 | 100 | 94 | 100 | 93 | 101 | 94 | 101 | 94 | 101 | 94 | 101 |
| Danvers, - - - | 519 | 719 | 523 | 719 | 510 | 728 | 524 | 715 | 529 | 709 | 529 | 709 | 520 | 709 | 520 | 719 |
| Essex, - - - | 137 | 85 | 137 | 85 | 136 | 86 | 137 | 85 | 138 | 84 | 138 | 84 | 137 | 85 | 137 | 85 |
| Georgetown, - - - | 188 | 143 | 188 | 142 | 185 | 145 | 187 | 143 | 187 | 143 | 188 | 142 | 188 | 143 | 186 | 143 |
| Gloucester, - - - | 444 | 392 | 442 | 394 | 441 | 395 | 444 | 392 | 454 | 382 | 449 | 387 | 446 | 391 | 452 | 385 |
| Groveland, - - - | 133 | 101 | 134 | 100 | 130 | 103 | 136 | 99 | 138 | 97 | 138 | 97 | 134 | 101 | 136 | 100 |
| Hamilton, - - - | 75 | 75 | 77 | 73 | 74 | 75 | 77 | 73 | 76 | 74 | 76 | 74 | 76 | 74 | 76 | 74 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Haverhill, | 530 | 497 | 537 | 491 | 525 | 503 | 538 | 489 | 537 | 490 | 550 | 478 | 535 | 494 | 539 | 489 |
| Ipswich, | 237 | 214 | 233 | 214 | 228 | 216 | 234 | 213 | 229 | 216 | 234 | 212 | 234 | 212 | 235 | 212 |
| Lawrence, | 567 | 622 | 567 | 624 | 549 | 640 | 583 | 607 | 609 | 580 | 602 | 587 | 568 | 621 | 571 | 617 |
| Lynn, | 1,173 | 975 | 1,180 | 966 | 1,147 | 987 | 1,188 | 960 | 1,213 | 930 | 1,180 | 961 | 1,183 | 966 | 1,194 | 952 |
| Lynnfield, | 56 | 42 | 55 | 43 | 55 | 43 | 56 | 42 | 56 | 42 | 56 | 42 | 56 | 42 | 56 | 42 |
| Manchester, | 100 | 82 | 101 | 81 | 93 | 88 | 101 | 80 | 101 | 82 | 102 | 79 | 100 | 81 | 99 | 81 |
| Marblehead, | 504 | 333 | 495 | 332 | 487 | 339 | 497 | 329 | 498 | 327 | 500 | 330 | 501 | 329 | 500 | 330 |
| Methuen, | 184 | 195 | 185 | 195 | 184 | 197 | 185 | 195 | 184 | 195 | 190 | 191 | 182 | 197 | 182 | 197 |
| Middleton, | 78 | 44 | 76 | 44 | 73 | 47 | 76 | 45 | 75 | 45 | 76 | 44 | 73 | 47 | 73 | 47 |
| Nahant, | 5 | 34 | 5 | 34 | 4 | 35 | 5 | 34 | 5 | 34 | 5 | 34 | 5 | 34 | 6 | 34 |
| Newbury, | 67 | 103 | 67 | 102 | 67 | 102 | 67 | 102 | 67 | 102 | 66 | 102 | 66 | 102 | 66 | 102 |
| Newburyport, | 400 | 848 | 405 | 844 | 426 | 855 | 407 | 841 | 454 | 837 | 469 | 825 | 450 | 841 | 452 | 840 |
| Rockport, | 226 | 167 | 225 | 167 | 220 | 172 | 225 | 167 | 227 | 165 | 228 | 164 | 223 | 169 | 224 | 168 |
| Rowley, | 68 | 97 | 68 | 98 | 67 | 97 | 68 | 97 | 68 | 97 | 68 | 96 | 68 | 97 | 68 | 97 |
| Salem, | 581 | 1,446 | 576 | 1,440 | 580 | 1,454 | 583 | 1,433 | 598 | 1,418 | 596 | 1,420 | 577 | 1,436 | 583 | 1,430 |
| Salisbury, | 186 | 148 | 188 | 146 | 183 | 151 | 191 | 144 | 191 | 143 | 194 | 141 | 187 | 147 | 188 | 147 |
| Saugus, | 137 | 57 | 137 | 57 | 134 | 57 | 137 | 57 | 136 | 56 | 137 | 57 | 137 | 57 | 137 | 57 |
| Swampscott, | 84 | 45 | 84 | 45 | 84 | 45 | 84 | 45 | 84 | 45 | 84 | 45 | 84 | 45 | 84 | 45 |
| Topsfield, | 32 | 135 | 33 | 136 | 33 | 136 | 32 | 136 | 31 | 136 | 33 | 136 | 32 | 136 | 32 | 137 |
| Wenham, | 90 | 100 | 90 | 99 | 90 | 99 | 90 | 99 | 90 | 99 | 90 | 99 | 90 | 99 | 90 | 99 |
| West Newbury, | 93 | 131 | 93 | 129 | 84 | 131 | 94 | 129 | 94 | 129 | 96 | 128 | 95 | 128 | 97 | 128 |
| 32 Towns, | 7,998 | 9,099 | 8,024 | 9,061 | 7,875 | 9,209 | 8,065 | 9,006 | 8,203 | 8,891 | 8,227 | 8,884 | 8,060 | 9,042 | 8,095 | 9,017 |

## COUNTY OF MIDDLESEX.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Acton, | 142 | 81 | 134 | 80 | 135 | 80 | 141 | 81 | 126 | 93 | 142 | 81 | 142 | 77 | 142 | 77 |
| Ashby, | 105 | 124 | 104 | 125 | 101 | 127 | 104 | 125 | 104 | 125 | 105 | 124 | 104 | 125 | 103 | 126 |
| Ashland, | 119 | 65 | 118 | 64 | 108 | 74 | 119 | 64 | 119 | 63 | 118 | 64 | 112 | 71 | 117 | 67 |
| Bedford, | 121 | 43 | 121 | 42 | 115 | 46 | 122 | 41 | 123 | 41 | 123 | 41 | 121 | 42 | 121 | 42 |
| Billerica, | 149 | 147 | 150 | 144 | 149 | 145 | 150 | 143 | 150 | 143 | 163 | 130 | 150 | 143 | 150 | 143 |
| Boxborough, | 55 | 22 | 55 | 22 | 52 | 22 | 55 | 21 | 55 | 22 | 55 | 21 | 55 | 22 | 55 | 22 |
| Brighton, | 20 | 267 | 22 | 266 | 20 | 267 | 21 | 266 | 21 | 266 | 27 | 260 | 20 | 268 | 21 | 267 |
| Burlington, | 56 | 16 | 55 | 16 | 54 | 17 | 55 | 16 | 56 | 15 | 55 | 16 | 55 | 16 | 55 | 16 |

## COUNTY OF MIDDLESEX—Continued.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Cambridge, - - - | 441 | 1,421 | 462 | 1,404 | 433 | 1,429 | 479 | 1,385 | 501 | 1,362 | 521 | 1,346 | 465 | 1,399 | 463 | 1,398 |
| Carlisle, - - - | 74 | 26 | 74 | 26 | 73 | 27 | 74 | 26 | 75 | 25 | 75 | 25 | 74 | 26 | 74 | 26 |
| Charlestown, - - - | 791 | 1,317 | 809 | 1,298 | 795 | 1,310 | 831 | 1,278 | 869 | 1,238 | 877 | 1,231 | 822 | 1,284 | 818 | 1,287 |
| Chelmsford, - - - | 122 | 186 | 125 | 185 | 103 | 203 | 125 | 182 | 128 | 182 | 174 | 135 | 124 | 186 | 126 | 184 |
| Concord, - - - | 172 | 125 | 179 | 116 | 151 | 144 | 180 | 114 | 175 | 120 | 182 | 114 | 174 | 120 | 173 | 122 |
| Dracut, - - - - | 128 | 110 | 129 | 109 | 126 | 111 | 130 | 108 | 127 | 110 | 132 | 106 | 131 | 107 | 131 | 107 |
| Dunstable, - - - | 57 | 55 | 57 | 55 | 57 | 55 | 57 | 55 | 57 | 55 | 57 | 55 | 57 | 55 | 57 | 55 |
| Framingham, - - | 207 | 353 | 211 | 349 | 194 | 363 | 215 | 348 | 200 | 347 | 224 | 335 | 213 | 345 | 213 | 344 |
| Groton, - - - | 207 | 167 | 208 | 166 | 207 | 166 | 207 | 166 | 208 | 166 | 211 | 163 | 207 | 167 | 207 | 167 |
| Holliston, - - - | 237 | 137 | 237 | 136 | 230 | 141 | 240 | 134 | 234 | 137 | 239 | 134 | 235 | 136 | 236 | 136 |
| Hopkinton, - - - | 254 | 89 | 254 | 89 | 247 | 94 | 254 | 89 | 256 | 88 | 251 | 93 | 254 | 89 | 254 | 89 |
| Lexington, - - - | 128 | 203 | 128 | 202 | 127 | 204 | 129 | 203 | 131 | 200 | 131 | 200 | 128 | 202 | 128 | 202 |
| Lincoln, - - - | 39 | 66 | 40 | 65 | 39 | 66 | 40 | 65 | 41 | 64 | 40 | 65 | 40 | 65 | 40 | 65 |
| Littleton, - - - | 95 | 75 | 96 | 75 | 94 | 77 | 97 | 74 | 99 | 72 | 100 | 70 | 96 | 74 | 97 | 73 |
| Lowell, - - - | 2,004 | 2,151 | 2,026 | 2,130 | 1,941 | 2,182 | 2,045 | 2,111 | 2,054 | 2,074 | 2,201 | 1,915 | 2,005 | 2,146 | 2,015 | 2,139 |
| Malden, - - - | 242 | 288 | 250 | 279 | 236 | 293 | 256 | 277 | 249 | 277 | 259 | 272 | 245 | 286 | 249 | 286 |
| Marlborough, - - - | 261 | 120 | 264 | 117 | 254 | 126 | 266 | 115 | 262 | 118 | 266 | 114 | 264 | 116 | 264 | 116 |
| Medford, - - - | 338 | 351 | 339 | 352 | 334 | 356 | 342 | 349 | 346 | 346 | 355 | 345 | 340 | 351 | 341 | 347 |
| Melrose, - - - | 160 | 85 | 161 | 84 | 159 | 86 | 161 | 84 | 165 | 81 | 166 | 80 | 161 | 84 | 163 | 84 |
| Natick, - - - - | 319 | 276 | 320 | 275 | 308 | 282 | 323 | 274 | 322 | 271 | 339 | 267 | 321 | 271 | 315 | 280 |
| Newton, - - - | 277 | 425 | 289 | 422 | 260 | 441 | 287 | 415 | 286 | 416 | 291 | 412 | 277 | 424 | 281 | 420 |
| North Reading, - - | 41 | 113 | 41 | 113 | 38 | 115 | 41 | 113 | 41 | 113 | 41 | 113 | 41 | 113 | 41 | 113 |
| Pepperell, - - - | 150 | 126 | 150 | 126 | 150 | 129 | 153 | 127 | 152 | 127 | 152 | 126 | 151 | 127 | 152 | 127 |
| Reading, - - - | 185 | 228 | 188 | 224 | 182 | 230 | 185 | 227 | 192 | 223 | 190 | 224 | 188 | 226 | 188 | 226 |
| Sherborn, - - - | 42 | 110 | 42 | 109 | 29 | 119 | 41 | 110 | 41 | 110 | 43 | 109 | 40 | 111 | 42 | 110 |
| Shirley, - - - | 99 | 113 | 100 | 112 | 97 | 115 | 99 | 112 | 100 | 111 | 107 | 105 | 98 | 114 | 103 | 109 |
| Somerville, - - - | 172 | 316 | 171 | 316 | 172 | 316 | 173 | 315 | 171 | 316 | 174 | 314 | 172 | 315 | 173 | 315 |
| South Reading, - - | 174 | 227 | 179 | 223 | 169 | 233 | 181 | 222 | 195 | 208 | 190 | 214 | 180 | 224 | 180 | 223 |
| Stoneham, - - - | 296 | 108 | 293 | 109 | 288 | 114 | 299 | 105 | 299 | 104 | 301 | 103 | 297 | 107 | 298 | 106 |
| Stowe, - - - | 102 | 75 | 102 | 74 | 94 | 80 | 102 | 74 | 103 | 73 | 104 | 72 | 103 | 74 | 102 | 74 |
| Sudbury, - - - | 130 | 98 | 128 | 98 | 127 | 98 | 132 | 96 | 130 | 97 | 134 | 94 | 131 | 96 | 131 | 96 |
| Tewksbury, - - - | 93 | 93 | 94 | 93 | 93 | 93 | 94 | 93 | 94 | 93 | 97 | 88 | 94 | 93 | 94 | 93 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Townsend, | 159 | 84 | 159 | 84 | 157 | 84 | 159 | 84 | 158 | 84 | 158 | 84 | 159 | 84 | 159 | 84 |
| Tyngsborough, | 77 | 66 | 77 | 66 | 76 | 66 | 77 | 66 | 76 | 66 | 77 | 66 | 77 | 66 | 76 | 66 |
| Waltham, | 329 | 366 | 328 | 365 | 322 | 371 | 331 | 364 | 333 | 357 | 308 | 376 | 330 | 365 | 327 | 367 |
| Watertown, | 104 | 275 | 107 | 272 | 94 | 275 | 108 | 274 | 106 | 275 | 116 | 266 | 108 | 272 | 108 | 272 |
| Wayland, | 107 | 104 | 108 | 101 | 104 | 107 | 108 | 101 | 108 | 102 | 108 | 101 | 107 | 103 | 106 | 105 |
| West Cambridge, | 96 | 236 | 100 | 232 | 90 | 244 | 106 | 227 | 111 | 223 | 113 | 221 | 97 | 235 | 99 | 236 |
| Westford, | 137 | 112 | 136 | 112 | 130 | 115 | 135 | 112 | 135 | 113 | 138 | 110 | 136 | 112 | 137 | 111 |
| Weston, | 73 | 91 | 74 | 89 | 73 | 90 | 73 | 89 | 74 | 89 | 75 | 89 | 75 | 89 | 75 | 89 |
| Wilmington, | 56 | 61 | 59 | 60 | 55 | 61 | 59 | 60 | 58 | 60 | 59 | 58 | 56 | 61 | 56 | 61 |
| Winchester, | 123 | 152 | 127 | 149 | 119 | 156 | 131 | 145 | 138 | 136 | 138 | 138 | 124 | 152 | 124 | 152 |
| Woburn, | 274 | 233 | 274 | 232 | 266 | 238 | 279 | 230 | 283 | 225 | 280 | 229 | 27 | 231 | 275 | 232 |
| 51 Towns, | 10,339 | 12,178 | 10,452 | 12,052 | 10,027 | 12,383 | 10,571 | 11,955 | 10,637 | 11,822 | 10,982 | 11 514 | 10,432 | 12,067 | 10,455 | 12,054 |

## COUNTY OF WORCESTER.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashburnham, | 203 | 146 | 203 | 146 | 201 | 146 | 203 | 146 | 203 | 144 | 203 | 146 | 202 | 146 | 202 | 146 |
| Athol, | 168 | 161 | 169 | 160 | 167 | 162 | 169 | 159 | 164 | 165 | 170 | 159 | 169 | 160 | 169 | 161 |
| Auburn, | 119 | 13 | 120 | 12 | 120 | 12 | 120 | 12 | 120 | 12 | 120 | 12 | 120 | 12 | 120 | 12 |
| Barre, | 266 | 262 | 266 | 262 | 261 | 264 | 266 | 262 | 261 | 264 | 267 | 261 | 266 | 262 | 267 | 261 |
| Berlin, | 100 | 46 | 100 | 46 | 100 | 46 | 100 | 46 | 99 | 46 | 100 | 46 | 100 | 46 | 100 | 46 |
| Blackstone, | 220 | 171 | 221 | 170 | 220 | 171 | 220 | 171 | 271 | 169 | 221 | 169 | 218 | 121 | 218 | 171 |
| Bolton, | 91 | 95 | 92 | 95 | 89 | 97 | 91 | 94 | 91 | 94 | 92 | 94 | 91 | 93 | 91 | 93 |
| Boylston, | 94 | 38 | 94 | 38 | 92 | 39 | 94 | 38 | 94 | 38 | 94 | 38 | 94 | 38 | 94 | 38 |
| Brookfield, | 219 | 79 | 216 | 78 | 213 | 78 | 216 | 78 | 222 | 72 | 223 | 68 | 216 | 76 | 218 | 74 |
| Charlton, | 263 | 41 | 264 | 41 | 263 | 41 | 264 | 41 | 253 | 52 | 264 | 40 | 263 | 42 | 263 | 42 |
| Clinton, | 136 | 228 | 137 | 226 | 134 | 230 | 136 | 228 | 135 | 228 | 138 | 225 | 135 | 229 | 134 | 229 |
| Dana, | 83 | 47 | 83 | 47 | 72 | 58 | 85 | 45 | 79 | 51 | 86 | 44 | 84 | 46 | 84 | 46 |
| Douglas, | 208 | 98 | 208 | 98 | 207 | 99 | 208 | 98 | 209 | 97 | 210 | 96 | 208 | 98 | 208 | 98 |
| Dudley, | 138 | 68 | 141 | 64 | 127 | 76 | 141 | 63 | 142 | 64 | 144 | 62 | 148 | 66 | 142 | 63 |
| Fitchburg, | 554 | 329 | 547 | 335 | 534 | 341 | 551 | 326 | 548 | 329 | 545 | 328 | 541 | 329 | 540 | 343 |
| Gardner, | 214 | 81 | 216 | 80 | 216 | 80 | 216 | 80 | 216 | 80 | 216 | 80 | 215 | 81 | 215 | 81 |
| Grafton, | 301 | 173 | 302 | 172 | 296 | 178 | 302 | 172 | 300 | 174 | 302 | 172 | 300 | 174 | 299 | 175 |
| Hardwick, | 137 | 160 | 139 | 158 | 136 | 161 | 140 | 157 | 140 | 157 | 140 | 157 | 138 | 159 | 140 | 157 |

## COUNTY OF WORCESTER—CONTINUED.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Harvard, - - - | 143 | 83 | 143 | 83 | 132 | 84 | 143 | 83 | 140 | 84 | 144 | 81 | 142 | 83 | 142 | 84 |
| Holden, - - - - | 180 | 126 | 181 | 126 | 180 | 126 | 181 | 126 | 179 | 127 | 181 | 126 | 179 | 127 | 179 | 127 |
| Hubbardston, - - - | 240 | 66 | 240 | 67 | 236 | 70 | 239 | 67 | 238 | 68 | 239 | 67 | 239 | 67 | 239 | 67 |
| Lancaster, - - - | 70 | 170 | 71 | 168 | 69 | 170 | 73 | 168 | 72 | 167 | 74 | 164 | 71 | 168 | 71 | 168 |
| Leicester, - - - | 229 | 126 | 232 | 123 | 231 | 123 | 233 | 123 | 231 | 123 | 231 | 124 | 232 | 123 | 233 | 123 |
| Leominster, - - - | 306 | 205 | 305 | 204 | 301 | 208 | 305 | 205 | 307 | 204 | 309 | 202 | 307 | 204 | 308 | 203 |
| Lunenburg, - - - | 135 | 80 | 134 | 80 | 133 | 81 | 135 | 80 | 136 | 79 | 135 | 79 | 134 | 80 | 134 | 81 |
| Mendon, - - - | 155 | 55 | 154 | 55 | 141 | 69 | 154 | 55 | 145 | 64 | 158 | 50 | 154 | 55 | 153 | 55 |
| Milford, - - - | 368 | 258 | 366 | 254 | 347 | 275 | 367 | 251 | 365 | 237 | 358 | 250 | 364 | 253 | 364 | 250 |
| Millbury, - - - | 246 | 160 | 249 | 156 | 247 | 159 | 249 | 156 | 247 | 160 | 250 | 156 | 249 | 158 | 249 | 158 |
| New Braintree, - - | 62 | 56 | 62 | 56 | 60 | 58 | 62 | 55 | 61 | 56 | 62 | 55 | 60 | 57 | 60 | 57 |
| Northborough, - - | 165 | 107 | 165 | 107 | 165 | 107 | 165 | 107 | 158 | 113 | 165 | 107 | 165 | 107 | 165 | 107 |
| Northbridge, - - | 147 | 155 | 147 | 155 | 144 | 155 | 147 | 155 | 157 | 143 | 156 | 127 | 148 | 154 | 148 | 154 |
| North Brookfield, - - | 228 | 105 | 229 | 104 | 222 | 111 | 227 | 106 | 226 | 107 | 229 | 104 | 228 | 105 | 226 | 107 |
| Oakham, - - - | 112 | 48 | 113 | 47 | 111 | 50 | 113 | 47 | 113 | 47 | 113 | 47 | 113 | 47 | 113 | 47 |
| Oxford, - - - - | 293 | 119 | 295 | 116 | 284 | 127 | 296 | 116 | 295 | 117 | 296 | 116 | 292 | 119 | 293 | 119 |
| Paxton, - - - - | 112 | 44 | 112 | 44 | 104 | 49 | 112 | 44 | 111 | 44 | 115 | 41 | 112 | 44 | 112 | 44 |
| Petersham, - - - | 175 | 108 | 176 | 108 | 172 | 111 | 176 | 108 | 177 | 107 | 176 | 108 | 176 | 108 | 176 | 108 |
| Phillipston, - - - | 36 | 98 | 35 | 98 | 35 | 98 | 35 | 98 | 35 | 98 | 35 | 98 | 35 | 98 | 35 | 98 |
| Princeton, - - - | 142 | 76 | 142 | 76 | 138 | 78 | 142 | 76 | 141 | 77 | 142 | 76 | 142 | 76 | 142 | 76 |
| Royalston, - - - | 87 | 171 | 88 | 170 | 83 | 175 | 88 | 170 | 87 | 172 | 89 | 169 | 87 | 171 | 87 | 171 |
| Rutland, - - - | 124 | 26 | 124 | 26 | 124 | 26 | 124 | 26 | 124 | 26 | 124 | 26 | 124 | 26 | 123 | 26 |
| Shrewsbury, - - - | 202 | 80 | 203 | 80 | 203 | 80 | 203 | 80 | 201 | 81 | 204 | 79 | 201 | 82 | 201 | 82 |
| Southborough, - - | 97 | 51 | 97 | 51 | 91 | 57 | 98 | 51 | 97 | 51 | 98 | 50 | 97 | 51 | 96 | 52 |
| Southbridge, - - - | 301 | 121 | 305 | 120 | 300 | 124 | 311 | 115 | 284 | 139 | 327 | 101 | 303 | 120 | 302 | 120 |
| Spencer, - - - | 228 | 187 | 228 | 187 | 227 | 189 | 229 | 187 | 230 | 187 | 231 | 186 | 228 | 188 | 228 | 188 |
| Sterling, - - - | 152 | 186 | 153 | 183 | 147 | 191 | 153 | 183 | 155 | 183 | 154 | 184 | 150 | 187 | 151 | 187 |
| Sturbridge, - - - | 201 | 109 | 201 | 107 | 191 | 116 | 200 | 109 | 170 | 134 | 199 | 110 | 198 | 111 | 199 | 111 |
| Sutton, - - - | 300 | 74 | 300 | 73 | 294 | 75 | 296 | 73 | 299 | 74 | 300 | 73 | 300 | 73 | 300 | 73 |
| Templeton, - - - | 222 | 138 | 224 | 137 | 212 | 144 | 225 | 135 | 218 | 140 | 227 | 133 | 224 | 136 | 223 | 137 |
| Upton, - - - | 225 | 144 | 226 | 143 | 224 | 145 | 227 | 142 | 230 | 138 | 229 | 140 | 227 | 141 | 227 | 141 |
| Uxbridge, - - - | 200 | 140 | 198 | 139 | 200 | 140 | 201 | 138 | 201 | 138 | 203 | 136 | 199 | 139 | 199 | 139 |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Warren, | 143 | 109 | 143 | 109 | 143 | 110 | 143 | 109 | 143 | 109 | 143 | 108 | 143 | 109 | 143 | 109 |
| Webster, | 188 | 112 | 191 | 109 | 189 | 111 | 194 | 106 | 195 | 104 | 203 | 95 | 190 | 110 | 189 | 111 |
| Westborough, | 219 | 201 | 228 | 193 | 214 | 207 | 230 | 191 | 227 | 194 | 234 | 187 | 222 | 199 | 222 | 197 |
| West Boylston, | 238 | 66 | 238 | 66 | 235 | 69 | 238 | 66 | 239 | 65 | 239 | 65 | 238 | 66 | 238 | 66 |
| West Brookfield, | 149 | 93 | 150 | 92 | 148 | 93 | 149 | 92 | 148 | 92 | 149 | 92 | 149 | 93 | 150 | 92 |
| Westminster, | 206 | 154 | 206 | 154 | 206 | 154 | 206 | 154 | 206 | 153 | 206 | 153 | 206 | 153 | 206 | 153 |
| Winchendon, | 213 | 142 | 216 | 139 | 216 | 139 | 218 | 136 | 214 | 138 | 217 | 136 | 214 | 139 | 214 | 140 |
| Worcester, | 2,182 | 939 | 2,203 | 917 | 2,162 | 947 | 2,212 | 908 | 2,191 | 921 | 2,219 | 898 | 2,184 | 928 | 2,187 | 924 |
| 58 Towns, | 12,935 | 7,724 | 12,994 | 7,450 | 12,609 | 7,880 | 13,021 | 7,611 | 12,940 | 7,697 | 13,098 | 7,496 | 12,934 | 7,633 | 12,931 | 7,688 |



## COUNTY OF HAMPSHIRE.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Amherst, | 187 | 271 | 186 | 270 | 182 | 271 | 186 | 270 | 188 | 267 | 189 | 278 | 186 | 271 | 186 | 271 |
| Belchertown, | 223 | 194 | 223 | 194 | 222 | 195 | 223 | 194 | 222 | 195 | 233 | 184 | 223 | 194 | 223 | 194 |
| Chesterfield, | 120 | 83 | 120 | 83 | 120 | 83 | 120 | 83 | 120 | 83 | 120 | 83 | 120 | 83 | 120 | 83 |
| Cummington, | 132 | 111 | 132 | 111 | 132 | 111 | 132 | 111 | 133 | 110 | 133 | 110 | 132 | 111 | 132 | 111 |
| Easthampton, | 89 | 111 | 90 | 110 | 87 | 113 | 90 | 110 | 91 | 109 | 91 | 109 | 89 | 111 | 89 | 111 |
| Enfield, | 40 | 147 | 38 | 147 | 38 | 147 | 38 | 147 | 39 | 146 | 40 | 147 | 38 | 147 | 38 | 147 |
| Goshen, | 34 | 75 | 34 | 75 | 34 | 75 | 34 | 75 | 34 | 75 | 34 | 75 | 34 | 75 | 34 | 75 |
| Granby, | 53 | 94 | 53 | 93 | 48 | 98 | 53 | 93 | 54 | 92 | 54 | 92 | 52 | 94 | 52 | 94 |
| Greenwich, | 96 | 61 | 96 | 61 | 93 | 61 | 96 | 61 | 96 | 61 | 96 | 61 | 96 | 61 | 96 | 61 |
| Hatfield, | 83 | 97 | 83 | 97 | 80 | 100 | 81 | 99 | 83 | 97 | 83 | 97 | 83 | 97 | 83 | 97 |
| Hadley, | 59 | 246 | 59 | 246 | 58 | 247 | 59 | 246 | 59 | 244 | 59 | 246 | 59 | 246 | 59 | 246 |
| Middlefield, | 55 | 60 | 53 | 62 | 52 | 63 | 53 | 62 | 53 | 62 | 53 | 62 | 53 | 62 | 52 | 61 |
| Northampton, | 443 | 374 | 444 | 373 | 423 | 386 | 443 | 372 | 442 | 369 | 446 | 368 | 444 | 372 | 444 | 373 |
| Norwich, | 77 | 47 | 77 | 47 | 77 | 47 | 77 | 47 | 75 | 48 | 78 | 46 | 77 | 47 | 77 | 47 |
| Pelham, | 97 | 47 | 96 | 47 | 96 | 46 | 97 | 47 | 95 | 48 | 97 | 47 | 97 | 47 | 97 | 47 |
| Plainfield, | 88 | 21 | 76 | 33 | 35 | 74 | 78 | 31 | 88 | 21 | 90 | 19 | 39 | 70 | 38 | 71 |
| Prescott, | 47 | 56 | 47 | 56 | 47 | 56 | 47 | 56 | 47 | 56 | 52 | 51 | 47 | 56 | 47 | 56 |
| South Hadley, | 99 | 177 | 98 | 176 | 97 | 176 | 99 | 175 | 99 | 175 | 99 | 175 | 99 | 175 | 99 | 175 |
| Southampton, | 114 | 107 | 115 | 106 | 110 | 110 | 115 | 106 | 115 | 106 | 116 | 105 | 114 | 107 | 113 | 107 |
| Ware, | 260 | 230 | 260 | 228 | 257 | 233 | 261 | 228 | 261 | 228 | 260 | 228 | 260 | 229 | 261 | 228 |
| Westhampton, | 50 | 74 | 50 | 74 | 47 | 74 | 50 | 74 | 50 | 74 | 50 | 74 | 50 | 74 | 50 | 74 |
| Williamsburg, | 157 | 125 | 158 | 124 | 156 | 126 | 157 | 125 | 158 | 124 | 157 | 125 | 156 | 126 | 154 | 127 |
| Worthington, | 95 | 127 | 95 | 127 | 94 | 128 | 95 | 127 | 94 | 128 | 96 | 126 | 94 | 128 | 95 | 127 |
| 23 Towns, | 2,698 | 2,935 | 2,683 | 2,940 | 2,585 | 3,020 | 2,684 | 2,939 | 2,696 | 2,918 | 2,726 | 2,908 | 2,642 | 2,983 | 2,639 | 2,983 |

## COUNTY OF HAMPDEN.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Blandford, | 126 | 82 | 125 | 82 | 114 | 88 | 125 | 82 | 117 | 83 | 125 | 82 | 125 | 82 | 125 | 83 |
| Brimfield, | 112 | 119 | 112 | 119 | 108 | 122 | 112 | 119 | 112 | 119 | 113 | 118 | 112 | 119 | 112 | 119 |
| Chester, | 84 | 120 | 84 | 117 | 81 | 120 | 84 | 117 | 84 | 117 | 84 | 117 | 84 | 120 | 84 | 120 |
| Chicopee, | 326 | 397 | 332 | 390 | 318 | 403 | 337 | 388 | 342 | 391 | 338 | 387 | 336 | 390 | 332 | 393 |
| Granville, | 140 | 97 | 140 | 97 | 140 | 97 | 140 | 97 | 140 | 97 | 140 | 97 | 140 | 97 | 140 | 97 |
| Holland, | 40 | 37 | 40 | 37 | 40 | 37 | 40 | 37 | 40 | 37 | 40 | 37 | 40 | 35 | 40 | 35 |
| Holyoke, | 195 | 174 | 195 | 173 | 190 | 178 | 197 | 172 | 195 | 173 | 197 | 170 | 197 | 172 | 199 | 171 |
| Longmeadow, | 96 | 45 | 93 | 48 | 78 | 62 | 93 | 48 | 94 | 47 | 95 | 46 | 91 | 51 | 91 | 50 |
| Ludlow, | 128 | 73 | 128 | 73 | 128 | 73 | 128 | 73 | 128 | 73 | 128 | 73 | 128 | 73 | 129 | 73 |
| Monson, | 169 | 177 | 169 | 177 | 167 | 179 | 169 | 177 | 169 | 176 | 171 | 175 | 169 | 177 | 169 | 177 |
| Montgomery, | 63 | 10 | 63 | 10 | 63 | 10 | 63 | 10 | 63 | 10 | 63 | 10 | 63 | 10 | 63 | 10 |
| Palmer, | 250 | 153 | 249 | 154 | 240 | 161 | 251 | 152 | 248 | 154 | 253 | 151 | 252 | 152 | 252 | 152 |
| Russell, | 82 | 13 | 81 | 14 | 81 | 14 | 81 | 14 | 81 | 14 | 82 | 13 | 81 | 14 | 81 | 14 |
| Southwick, | 131 | 61 | 130 | 61 | 130 | 61 | 131 | 61 | 131 | 61 | 131 | 61 | 131 | 61 | 131 | 60 |
| Springfield, | 933 | 805 | 940 | 801 | 927 | 803 | 945 | 795 | 944 | 793 | 948 | 786 | 942 | 796 | 947 | 791 |
| Tolland, | 81 | 2 | 79 | 4 | 74 | 8 | 78 | 4 | 79 | 4 | 79 | 4 | 79 | 4 | 79 | 4 |
| Wales, | 45 | 63 | 45 | 63 | 44 | 64 | 45 | 63 | 44 | 61 | 63 | 40 | 45 | 63 | 46 | 63 |
| Westfield, | 469 | 220 | 576 | 214 | 466 | 221 | 485 | 207 | 482 | 207 | 535 | 157 | 471 | 220 | 471 | 219 |
| West Springfield, | 173 | 220 | 174 | 219 | 173 | 219 | 174 | 219 | 172 | 219 | 173 | 220 | 173 | 220 | 173 | 219 |
| Wilbraham, | 149 | 110 | 150 | 109 | 149 | 110 | 150 | 109 | 149 | 110 | 150 | 109 | 149 | 110 | 149 | 110 |
| 20 Towns, | 3,792 | 2,978 | 3,805 | 2,962 | 3,711 | 3,030 | 3,828 | 2,944 | 3,814 | 2,946 | 3,908 | 2,853 | 3,808 | 2,966 | 3,813 | 2,960 |

## COUNTY OF FRANKLIN.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashfield, | 171 | 115 | 171 | 114 | 162 | 121 | 171 | 114 | 171 | 113 | 171 | 114 | 171 | 115 | 171 | 115 |
| Bernardston, | 103 | 90 | 105 | 88 | 103 | 90 | 106 | 87 | 103 | 90 | 107 | 85 | 105 | 88 | 105 | 88 |
| Buckland, | 165 | 79 | 166 | 78 | 161 | 78 | 165 | 79 | 167 | 77 | 165 | 78 | 165 | 79 | 166 | 78 |
| Charlemont, | 121 | 92 | 121 | 92 | 121 | 92 | 121 | 92 | 121 | 92 | 121 | 92 | 121 | 92 | 121 | 92 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Coleraine, | 175 | 161 | 175 | 161 | 173 | 161 | 175 | 161 | 174 | 161 | 175 | 161 | 175 | 161 | 175 | 161 |
| Conway, | 206 | 189 | 208 | 187 | 205 | 189 | 208 | 187 | 208 | 187 | 209 | 187 | 207 | 188 | 207 | 188 |
| Deerfield, | 223 | 190 | 224 | 190 | 221 | 192 | 224 | 190 | 224 | 190 | 224 | 190 | 224 | 190 | 224 | 191 |
| Erving, | 52 | 12 | 52 | 12 | 52 | 12 | 52 | 12 | 51 | 12 | 52 | 12 | 52 | 12 | 53 | 12 |
| Gill, | 46 | 61 | 46 | 61 | 46 | 61 | 46 | 61 | 44 | 63 | 46 | 61 | 46 | 61 | 47 | 60 |
| Greenfield, | 255 | 263 | 259 | 259 | 255 | 263 | 259 | 260 | 262 | 258 | 259 | 260 | 257 | 262 | 256 | 262 |
| Hawley, | 52 | 80 | 51 | 80 | 41 | 87 | 51 | 80 | 50 | 80 | 51 | 80 | 51 | 80 | 51 | 80 |
| Heath, | 72 | 58 | 71 | 59 | 69 | 61 | 71 | 59 | 71 | 59 | 71 | 59 | 72 | 58 | 72 | 58 |
| Leverett, | 112 | 56 | 112 | 56 | 111 | 56 | 111 | 56 | 111 | 56 | 111 | 56 | 112 | 56 | 112 | 56 |
| Leyden, | 78 | 29 | 78 | 29 | 77 | 29 | 77 | 29 | 77 | 29 | 77 | 29 | 77 | 29 | 77 | 29 |
| Monroe, | 25 | 5 | 25 | 5 | 20 | 10 | 25 | 5 | 25 | 5 | 25 | 5 | 25 | 5 | 25 | 5 |
| Montague, | 159 | 108 | 139 | 108 | 139 | 108 | 139 | 108 | 138 | 109 | 141 | 106 | 139 | 108 | 141 | 106 |
| New Salem, | 116 | 111 | 116 | 111 | 116 | 111 | 116 | 111 | 116 | 111 | 119 | 108 | 117 | 111 | 116 | 111 |
| Northfield, | 170 | 98 | 169 | 97 | 169 | 97 | 169 | 97 | 168 | 99 | 169 | 97 | 169 | 97 | 169 | 98 |
| Orange, | 157 | 120 | 157 | 120 | 155 | 122 | 157 | 120 | 157 | 120 | 157 | 120 | 157 | 120 | 157 | 120 |
| Rowe, | 41 | 68 | 41 | 68 | 38 | 71 | 41 | 68 | 41 | 68 | 40 | 68 | 41 | 68 | 41 | 68 |
| Shelburne, | 107 | 155 | 107 | 155 | 92 | 162 | 107 | 155 | 105 | 155 | 108 | 153 | 107 | 155 | 103 | 159 |
| Shutesbury, | 104 | 46 | 103 | 46 | 100 | 49 | 104 | 45 | 103 | 47 | 104 | 45 | 105 | 45 | 103 | 46 |
| Sunderland, | 97 | 101 | 97 | 100 | 93 | 101 | 97 | 100 | 99 | 98 | 99 | 98 | 97 | 99 | 98 | 99 |
| Warwick, | 107 | 66 | 106 | 66 | 106 | 66 | 106 | 66 | 106 | 66 | 107 | 65 | 106 | 66 | 107 | 65 |
| Wendell, | 81 | 26 | 77 | 28 | 74 | 29 | 80 | 26 | 80 | 26 | 80 | 26 | 80 | 26 | 80 | 26 |
| Whately, | 138 | 135 | 138 | 135 | 136 | 136 | 138 | 135 | 139 | 133 | 138 | 135 | 136 | 136 | 136 | 136 |
| 26 Towns, | 3,133 | 2,514 | 3,114 | 2,505 | 3,035 | 2,554 | 3,116 | 2,503 | 3,111 | 2,504 | 3,126 | 2,490 | 3,112 | 2,507 | 3,113 | 2,509 |

## COUNTY OF BERKSHIRE.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adams, | 352 | 420 | 352 | 420 | 349 | 422 | 351 | 421 | 350 | 422 | 359 | 418 | 352 | 420 | 352 | 420 |
| Alford, | 63 | 22 | 63 | 21 | 61 | 21 | 63 | 21 | 63 | 21 | 64 | 20 | 63 | 21 | 63 | 21 |
| Becket, | 100 | 91 | 101 | 90 | 101 | 91 | 100 | 91 | 101 | 90 | 101 | 90 | 100 | 91 | 101 | 90 |
| Cheshire, | 202 | 13 | 200 | 15 | 196 | 19 | 202 | 13 | 199 | 16 | 201 | 14 | 202 | 13 | 202 | 13 |
| Clarksburg, | 42 | 20 | 41 | 21 | 40 | 22 | 41 | 21 | 40 | 22 | 41 | 21 | 40 | 22 | 40 | 22 |
| Dalton, | 84 | 73 | 84 | 73 | 84 | 73 | 84 | 73 | 75 | 82 | 84 | 73 | 84 | 73 | 84 | 73 |
| Egremont, | 106 | 107 | 107 | 106 | 106 | 107 | 106 | 107 | 107 | 106 | 107 | 106 | 106 | 107 | 106 | 107 |
| Florida, | 46 | 36 | 46 | 36 | 45 | 37 | 46 | 36 | 46 | 36 | 46 | 36 | 46 | 36 | 45 | 37 |
| Great Barrington, | 163 | 236 | 163 | 236 | 162 | 237 | 163 | 236 | 163 | 236 | 165 | 234 | 163 | 236 | 163 | 235 |

## COUNTY OF BERKSHIRE—CONTINUED.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Hancock, | 62 | 58 | 62 | 58 | 61 | 58 | 62 | 58 | 62 | 58 | 62 | 58 | 62 | 58 | 62 | 58 |
| Hinsdale, | 68 | 95 | 61 | 102 | 53 | 110 | 64 | 99 | 59 | 104 | 64 | 99 | 64 | 99 | 65 | 98 |
| Lanesborough, | 122 | 96 | 120 | 97 | 118 | 97 | 120 | 97 | 120 | 97 | 120 | 96 | 120 | 97 | 117 | 97 |
| Lee, | 234 | 271 | 235 | 270 | 233 | 273 | 236 | 269 | 236 | 269 | 236 | 269 | 236 | 269 | 236 | 269 |
| Lenox, | 128 | 116 | 128 | 116 | 126 | 116 | 128 | 116 | 127 | 116 | 127 | 114 | 128 | 116 | 128 | 116 |
| Monterey, | 95 | 31 | 95 | 31 | 94 | 32 | 95 | 31 | 95 | 31 | 94 | 32 | 95 | 31 | 94 | 32 |
| Mount Washington, | 26 | 3 | 29 | – | 29 | – | 29 | – | 28 | 1 | 29 | – | 29 | – | 29 | – |
| New Ashford, | 31 | 7 | 30 | 7 | 31 | 7 | 31 | 7 | 31 | 7 | 31 | 7 | 31 | 7 | 31 | 7 |
| New Marlborough, | 118 | 136 | 119 | 136 | 113 | 139 | 119 | 136 | 117 | 138 | 119 | 136 | 120 | 135 | 121 | 135 |
| Otis, | 91 | 57 | 90 | 57 | 89 | 58 | 90 | 57 | 90 | 57 | 90 | 56 | 90 | 57 | 90 | 57 |
| Peru, | 28 | 61 | 28 | 61 | 25 | 64 | 27 | 62 | 29 | 60 | 28 | 61 | 28 | 61 | 26 | 63 |
| Pittsfield, | 440 | 469 | 444 | 464 | 435 | 470 | 451 | 457 | 442 | 462 | 449 | 458 | 443 | 465 | 442 | 466 |
| Richmond, | 70 | 28 | 69 | 29 | 69 | 29 | 69 | 29 | 69 | 29 | 69 | 29 | 69 | 29 | 69 | 29 |
| Sandisfield, | 141 | 69 | 138 | 69 | 138 | 69 | 138 | 69 | 139 | 65 | 139 | 65 | 140 | 65 | 140 | 65 |
| Savoy, | 160 | 12 | 160 | 12 | 159 | 12 | 160 | 12 | 157 | 14 | 161 | 11 | 160 | 12 | 160 | 12 |
| Sheffield, | 147 | 114 | 146 | 115 | 144 | 117 | 146 | 115 | 144 | 117 | 146 | 115 | 146 | 115 | 147 | 114 |
| Stockbridge, | 164 | 114 | 165 | 113 | 164 | 114 | 166 | 113 | 164 | 113 | 166 | 113 | 165 | 113 | 165 | 113 |
| Tyringham, | 68 | 30 | 66 | 29 | 66 | 29 | 66 | 29 | 66 | 29 | 66 | 29 | 66 | 29 | 66 | 29 |
| Washington, | 52 | 32 | 45 | 39 | 45 | 39 | 49 | 35 | 44 | 40 | 48 | 36 | 45 | 39 | 45 | 39 |
| West Stockbridge, | 59 | 99 | 57 | 96 | 53 | 100 | 57 | 96 | 57 | 96 | 57 | 96 | 57 | 96 | 56 | 95 |
| Williamstown, | 240 | 175 | 240 | 175 | 240 | 175 | 240 | 175 | 240 | 175 | 240 | 175 | 240 | 175 | 240 | 176 |
| Windsor, | 83 | 70 | 83 | 68 | 81 | 70 | 83 | 68 | 83 | 67 | 83 | 68 | 83 | 68 | 83 | 68 |
| 31 Towns, | 3,785 | 3,161 | 3,767 | 3,162 | 3,710 | 3,207 | 3,782 | 3,149 | 3,743 | 3,163 | 3,792 | 3,135 | 3,773 | 3,155 | 3,768 | 3,156 |

## COUNTY OF NORFOLK.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Bellingham, | 136 | 42 | 135 | 44 | 131 | 48 | 136 | 42 | 137 | 41 | 136 | 42 | 136 | 42 | 136 | 42 |
| Braintree, | 155 | 243 | 157 | 243 | 152 | 245 | 158 | 240 | 158 | 240 | 169 | 230 | 158 | 241 | 158 | 241 |
| Brookline, | 75 | 269 | 73 | 272 | 57 | 287 | 78 | 267 | 79 | 266 | 80 | 265 | 73 | 272 | 74 | 271 |
| Canton, | 154 | 201 | 160 | 198 | 155 | 202 | 162 | 195 | 160 | 196 | 163 | 192 | 157 | 196 | 154 | 198 |
| Cohasset, | 50 | 101 | 50 | 100 | 50 | 101 | 56 | 96 | 61 | 96 | 55 | 96 | 50 | 101 | 50 | 101 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Dedham, | 237 | 416 | 242 | 407 | 229 | 419 | 249 | 401 | 247 | 444 | 251 | 397 | 243 | 407 | 238 | 409 |
| Dorchester, | 410 | 634 | 417 | 626 | 403 | 639 | 425 | 639 | 433 | 611 | 439 | 601 | 415 | 631 | 414 | 631 |
| Dover, | 36 | 59 | 36 | 59 | 36 | 60 | 43 | 52 | 36 | 58 | 43 | 52 | 36 | 59 | 36 | 59 |
| Foxborough, | 125 | 148 | 126 | 147 | 122 | 147 | 126 | 147 | 130 | 143 | 129 | 143 | 126 | 147 | 126 | 147 |
| Franklin, | 155 | 148 | 157 | 145 | 146 | 155 | 159 | 144 | 151 | 152 | 159 | 144 | 157 | 146 | 158 | 145 |
| Medfield, | 49 | 112 | 50 | 111 | 40 | 121 | 50 | 111 | 50 | 111 | 52 | 109 | 49 | 112 | 48 | 113 |
| Medway, | 215 | 202 | 218 | 198 | 209 | 206 | 222 | 194 | 213 | 202 | 229 | 185 | 216 | 200 | 215 | 200 |
| Milton, | 97 | 165 | 101 | 161 | 95 | 167 | 102 | 160 | 102 | 160 | 109 | 153 | 99 | 163 | 97 | 165 |
| Needham, | 117 | 117 | 117 | 117 | 113 | 118 | 117 | 117 | 117 | 116 | 117 | 116 | 117 | 117 | 117 | 116 |
| Quincy, | 238 | 358 | 239 | 357 | 230 | 364 | 239 | 356 | 250 | 345 | 256 | 338 | 237 | 358 | 234 | 359 |
| Randolph, | 211 | 444 | 216 | 439 | 212 | 443 | 221 | 436 | 239 | 418 | 241 | 416 | 219 | 438 | 228 | 435 |
| Roxbury, | 434 | 1,085 | 438 | 1,077 | 428 | 1,083 | 433 | 1,071 | 451 | 1,001 | 458 | 996 | 437 | 1,065 | 438 | 1,077 |
| Sharon, | 114 | 111 | 113 | 111 | 114 | 111 | 117 | 108 | 116 | 109 | 115 | 109 | 112 | 110 | 112 | 111 |
| Stoughton, | 309 | 264 | 312 | 254 | 300 | 260 | 316 | 259 | 324 | 244 | 340 | 231 | 313 | 258 | 299 | 262 |
| Walpole, | 139 | 208 | 139 | 208 | 128 | 215 | 140 | 207 | 143 | 205 | 140 | 208 | 139 | 208 | 141 | 209 |
| Weymouth, | 391 | 424 | 400 | 416 | 380 | 433 | 401 | 415 | 417 | 399 | 410 | 406 | 399 | 417 | 400 | 416 |
| West Roxbury, | 66 | 373 | 70 | 370 | 66 | 374 | 68 | 372 | 72 | 368 | 79 | 361 | 68 | 372 | 68 | 372 |
| Wrentham, | 174 | 262 | 175 | 262 | 170 | 266 | 176 | 261 | 175 | 263 | 178 | 260 | 176 | 262 | 176 | 261 |
| 23 Towns, | 4,087 | 6,386 | 4,141 | 6,322 | 3,966 | 6,464 | 4,194 | 6,290 | 4,261 | 6,188 | 4,348 | 6,050 | 4,132 | 6,322 | 4,117 | 6,340 |

## COUNTY OF BRISTOL.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Attleborough, | 367 | 339 | 344 | 358 | 327 | 376 | 370 | 338 | 341 | 363 | 350 | 359 | 368 | 340 | 368 | 339 |
| Berkley, | 68 | 48 | 70 | 45 | 70 | 46 | 73 | 44 | 72 | 43 | 72 | 44 | 70 | 46 | 70 | 46 |
| Dartmouth, | 240 | 217 | 240 | 217 | 240 | 217 | 240 | 217 | 240 | 217 | 240 | 217 | 240 | 217 | 240 | 217 |
| Dighton, | 103 | 106 | 104 | 105 | 102 | 107 | 103 | 105 | 103 | 105 | 105 | 104 | 103 | 105 | 103 | 106 |
| Easton, | 224 | 200 | 226 | 198 | 223 | 201 | 224 | 200 | 230 | 193 | 233 | 191 | 224 | 201 | 225 | 200 |
| Fairhaven, | 310 | 317 | 309 | 317 | 308 | 318 | 310 | 317 | 310 | 317 | 310 | 317 | 310 | 317 | 310 | 317 |
| Fall River, | 566 | 498 | 571 | 495 | 570 | 495 | 570 | 495 | 566 | 495 | 538 | 526 | 568 | 496 | 567 | 503 |
| Freetown, | 57 | 64 | 57 | 64 | 56 | 65 | 58 | 63 | 56 | 65 | 58 | 63 | 58 | 63 | 58 | 63 |
| Mansfield, | 203 | 35 | 201 | 32 | 200 | 35 | 202 | 32 | 201 | 32 | 191 | 43 | 202 | 33 | 199 | 34 |
| New Bedford, | 1,195 | 1,317 | 1,195 | 1,316 | 1,185 | 1,317 | 1,199 | 1,314 | 1,204 | 1,308 | 1,195 | 1,310 | 1,198 | 1,314 | 1,193 | 1,315 |
| Norton, | 156 | 116 | 160 | 115 | 159 | 116 | 160 | 115 | 158 | 115 | 158 | 116 | 159 | 114 | 159 | 114 |
| Pawtucket, | 179 | 184 | 179 | 184 | 178 | 185 | 179 | 184 | 178 | 184 | 181 | 183 | 179 | 183 | 179 | 183 |
| Raynham, | 149 | 82 | 149 | 82 | 145 | 83 | 148 | 82 | 146 | 82 | 149 | 82 | 149 | 82 | 149 | 82 |
| Rehoboth, | 147 | 137 | 147 | 137 | 148 | 136 | 147 | 137 | 147 | 137 | 148 | 136 | 147 | 137 | 147 | 137 |

## COUNTY OF BRISTOL—CONTINUED.

| TOWNS. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Seekonk, | 141 | 87 | 141 | 87 | 127 | 100 | 141 | 87 | 137 | 90 | 143 | 85 | 141 | 87 | 141 | 87 |
| Somerset, | 111 | 134 | 111 | 134 | 111 | 134 | 111 | 134 | 111 | 134 | 111 | 134 | 111 | 134 | 111 | 134 |
| Swanzey, | 93 | 112 | 93 | 112 | 92 | 112 | 93 | 112 | 93 | 112 | 93 | 112 | 93 | 112 | 93 | 112 |
| Taunton, | 549 | 888 | 549 | 889 | 531 | 901 | 552 | 887 | 544 | 890 | 544 | 886 | 547 | 888 | 546 | 891 |
| Westport, | 151 | 97 | 153 | 97 | 154 | 97 | 154 | 97 | 151 | 99 | 154 | 97 | 153 | 97 | 153 | 97 |
| 19 Towns, | 5,009 | 4,978 | 4,999 | 4,984 | 4,926 | 5,041 | 5,034 | 4,960 | 4,988 | 4,981 | 4,973 | 5,005 | 5,020 | 4,966 | 5,011 | 5,977 |

## COUNTY OF PLYMOUTH.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Abington, | 525 | 344 | 533 | 337 | 522 | 346 | 534 | 332 | 544 | 322 | 543 | 325 | 530 | 338 | 530 | 337 |
| Bridgewater, | 166 | 296 | 168 | 295 | 165 | 298 | 170 | 293 | 167 | 296 | 171 | 293 | 169 | 294 | 168 | 295 |
| Carver, | 104 | 120 | 105 | 119 | 104 | 119 | 104 | 119 | 104 | 119 | 104 | 119 | 104 | 119 | 104 | 119 |
| Duxbury, | 246 | 175 | 246 | 174 | 246 | 175 | 247 | 174 | 247 | 174 | 249 | 172 | 248 | 173 | 248 | 173 |
| East Bridgewater, | 260 | 230 | 260 | 230 | 260 | 230 | 264 | 226 | 263 | 228 | 263 | 227 | 262 | 228 | 264 | 226 |
| Halifax, | 73 | 70 | 70 | 72 | 70 | 72 | 70 | 71 | 72 | 68 | 71 | 71 | 70 | 70 | 70 | 71 |
| Hanover, | 148 | 80 | 148 | 79 | 148 | 79 | 148 | 78 | 145 | 81 | 150 | 77 | 148 | 79 | 149 | 78 |
| Hanson, | 132 | 50 | 133 | 51 | 128 | 54 | 131 | 49 | 133 | 51 | 132 | 52 | 133 | 49 | 134 | 49 |
| Hingham, | 207 | 398 | 209 | 397 | 207 | 399 | 209 | 394 | 212 | 394 | 209 | 396 | 209 | 397 | 208 | 398 |
| Hull, | 7 | 16 | 7 | 16 | 7 | 16 | 7 | 16 | 7 | 16 | 7 | 16 | 7 | 16 | 7 | 16 |
| Kingston, | 123 | 165 | 124 | 164 | 121 | 166 | 135 | 153 | 129 | 160 | 135 | 154 | 136 | 153 | 136 | 153 |
| Marshfield, | 146 | 93 | 146 | 93 | 145 | 94 | 146 | 93 | 144 | 95 | 146 | 93 | 146 | 93 | 146 | 93 |
| Middleborough, | 361 | 315 | 360 | 315 | 361 | 316 | 363 | 313 | 362 | 314 | 363 | 314 | 361 | 315 | 362 | 315 |
| North Bridgewater, | 391 | 407 | 393 | 401 | 389 | 405 | 394 | 401 | 394 | 399 | 396 | 399 | 392 | 403 | 392 | 405 |
| Pembroke, | 119 | 109 | 119 | 109 | 119 | 109 | 119 | 109 | 119 | 109 | 120 | 108 | 119 | 109 | 119 | 109 |
| Plymouth, | 412 | 419 | 420 | 410 | 414 | 415 | 428 | 403 | 432 | 398 | 425 | 405 | 419 | 412 | 419 | 411 |
| Plympton, | 34 | 115 | 34 | 115 | 34 | 115 | 34 | 115 | 34 | 115 | 34 | 115 | 34 | 115 | 34 | 115 |
| Rochester, | 135 | 251 | 135 | 250 | 126 | 259 | 135 | 250 | 136 | 249 | 146 | 239 | 136 | 248 | 135 | 249 |
| Scituate, | 166 | 83 | 166 | 83 | 165 | 84 | 166 | 83 | 163 | 84 | 166 | 83 | 166 | 83 | 166 | 83 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| South Scituate, - - | 87 | 191 | 86 | 191 | 84 | 193 | 91 | 186 | 93 | 187 | 96 | 182 | 89 | 189 | 90 | 187 |
| Wareham, - - - | 101 | 244 | 100 | 243 | 99 | 242 | 100 | 243 | 100 | 242 | 101 | 242 | 101 | 242 | 101 | 243 |
| West Bridgewater, - - | 131 | 156 | 121 | 127 | 128 | 154 | 122 | 152 | 136 | 148 | 136 | 147 | 129 | 154 | 129 | 154 |
| 22 Towns, - - - | 4,074 | 4,327 | 4,083 | 4,271 | 4,042 | 4,340 | 4,117 | 4,253 | 4,136 | 4,249 | 4,163 | 4,229 | 4,008 | 4,279 | 4,111 | 4,279 |

## COUNTY OF BARNSTABLE.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Barnstable, - - - | 249 | 151 | 249 | 151 | 249 | 151 | 249 | 151 | 249 | 151 | 249 | 151 | 249 | 151 | 248 | 151 |
| Brewster, - - - | 69 | 61 | 70 | 61 | 69 | 61 | 70 | 61 | 70 | 61 | 70 | 61 | 70 | 61 | 70 | 61 |
| Chatham, - - - | 84 | 112 | 84 | 112 | 84 | 112 | 84 | 112 | 84 | 112 | 84 | 112 | 84 | 112 | 84 | 112 |
| Dennis, - - - - | 90 | 117 | 91 | 116 | 89 | 118 | 92 | 115 | 89 | 118 | 91 | 116 | 90 | 117 | 90 | 117 |
| Eastham, - - - | 31 | 46 | 30 | 46 | 32 | 45 | 32 | 45 | 32 | 45 | 32 | 45 | 32 | 45 | 32 | 45 |
| Falmouth, - - - | 122 | 210 | 122 | 210 | 122 | 210 | 122 | 210 | 122 | 210 | 122 | 210 | 122 | 210 | 122 | 210 |
| Harwich, - - - | 84 | 139 | 84 | 139 | 84 | 139 | 84 | 139 | 84 | 139 | 84 | 139 | 84 | 139 | 84 | 139 |
| Orleans, - - - - | 54 | 73 | 54 | 73 | 54 | 73 | 54 | 73 | 54 | 73 | 54 | 73 | 54 | 73 | 54 | 73 |
| Provincetown, - - | 124 | 132 | 125 | 131 | 123 | 133 | 124 | 131 | 125 | 131 | 125 | 131 | 124 | 132 | 124 | 132 |
| Sandwich, - - - | 157 | 264 | 158 | 265 | 158 | 265 | 158 | 265 | 158 | 265 | 159 | 264 | 158 | 265 | 158 | 264 |
| Truro, - - - - | 84 | 41 | 85 | 40 | 85 | 40 | 85 | 40 | 85 | 40 | 85 | 40 | 84 | 41 | 84 | 41 |
| Wellfleet, - - - | 111 | 109 | 111 | 109 | 111 | 109 | 111 | 109 | 111 | 109 | 111 | 109 | 111 | 109 | 111 | 109 |
| Yarmouth, - - - | 35 | 148 | 35 | 148 | 35 | 148 | 35 | 147 | 35 | 147 | 35 | 147 | 35 | 147 | 35 | 147 |
| 13 Towns, - - - | 1,294 | 1,650 | 1,298 | 1,601 | 1,295 | 1,604 | 1,300 | 1,598 | 1,298 | 1,601 | 1,301 | 1,598 | 1,297 | 1,602 | 1,296 | 1,601 |

## COUNTY OF NANTUCKET.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Nantucket, - - - | 273 | 394 | 273 | 393 | 272 | 395 | 273 | 394 | 275 | 392 | 275 | 392 | 273 | 394 | 274 | 393 |

## COUNTY OF DUKES COUNTY.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Chilmark, - - - | 32 | 16 | 35 | 13 | 35 | 13 | 35 | 13 | 36 | 12 | 41 | 7 | 36 | 12 | 39 | 12 |
| Edgartown, - - - | 44 | 159 | 45 | 158 | 43 | 159 | 45 | 158 | 47 | 156 | 44 | 159 | 44 | 159 | 44 | 149 |
| Tisbury, - - - | 56 | 63 | 56 | 63 | 56 | 63 | 56 | 63 | 56 | 63 | 56 | 63 | 56 | 63 | 56 | 63 |
| 3 Towns, - - - | 132 | 238 | 136 | 234 | 134 | 235 | 136 | 234 | 139 | 231 | 141 | 229 | 136 | 234 | 139 | 224 |

## RECAPITULATION.

| COUNTIES. | No. 1. | | No. 2. | | No. 3. | | No. 4. | | No. 5. | | No. 6. | | No. 7. | | No. 8. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. | Yes. | No. |
| Suffolk, - - - - | 3,673 | 9,588 | 3,613 | 9,069 | 3,512 | 9,020 | 3,684 | 8,992 | 3,774 | 8,849 | 4,051 | 8,729 | 3,619 | 8,861 | 3,650 | 8,928 |
| Essex, - - - - | 7,998 | 9,099 | 8,024 | 9,061 | 7,875 | 9,209 | 8,065 | 9,006 | 8,203 | 8,891 | 8,227 | 8,884 | 8,060 | 9,042 | 8,095 | 9,017 |
| Middlesex, - - - | 10,339 | 12,178 | 10,452 | 12,052 | 10,027 | 12,383 | 10,571 | 11,955 | 10,637 | 11,822 | 10,982 | 11,514 | 10,432 | 12,067 | 10,455 | 12,054 |
| Worcester, - - - | 12,935 | 7,724 | 12,994 | 7,450 | 12,609 | 7,880 | 13,021 | 7,611 | 12,940 | 7,697 | 13,098 | 7,496 | 12,934 | 7,633 | 12,931 | 7,688 |
| Hampshire, - - - | 2,698 | 2,935 | 2,683 | 2,940 | 2,585 | 3,020 | 2,684 | 2,939 | 2,696 | 2,918 | 2,726 | 2,908 | 2,642 | 2,983 | 2,639 | 2,983 |
| Hampden, - - - | 3,792 | 2,978 | 3,805 | 2,962 | 3,711 | 3,030 | 3,828 | 2,944 | 3,814 | 2,946 | 3,908 | 2,853 | 3,808 | 2,966 | 3,813 | 2,960 |
| Franklin, - - | 3,133 | 2,514 | 3,114 | 2,505 | 3,035 | 2,554 | 3,116 | 2,503 | 3,111 | 2,504 | 3,126 | 2,490 | 3,112 | 2,507 | 3,113 | 2,509 |
| Berkshire, - - | 3,785 | 3,161 | 3,767 | 3,162 | 3,710 | 3,207 | 3,782 | 3,149 | 3,743 | 3,163 | 3,792 | 3,135 | 3,773 | 3,155 | 3,768 | 3,156 |
| Norfolk, - - - - | 4,087 | 6,386 | 4,141 | 6,322 | 3,966 | 6,464 | 4,194 | 6,290 | 4,261 | 6,188 | 4,348 | 6,050 | 4,132 | 6,322 | 4,117 | 6,340 |
| Bristol, - - - - | 5,009 | 4,978 | 4,999 | 4,984 | 4,926 | 5,041 | 5,034 | 4,960 | 4,988 | 4,981 | 4,973 | 5,005 | 5,020 | 4,966 | 5,011 | 4,977 |
| Plymouth, - - - | 4,074 | 4,327 | 4,083 | 4,271 | 4,042 | 4,340 | 4,117 | 4,253 | 4,136 | 4,249 | 4,163 | 4,229 | 4,008 | 4,279 | 4,111 | 4,279 |
| Barnstable, - - - | 1,294 | 1,650 | 4,298 | 1,601 | 1,295 | 1,604 | 1,300 | 1,598 | 1,298 | 1,601 | 1,301 | 1,598 | 1,297 | 1,602 | 1,296 | 1,601 |
| Nantucket, - - - | 273 | 394 | 273 | 393 | 272 | 395 | 273 | 394 | 275 | 392 | 275 | 392 | 273 | 394 | 274 | 393 |
| Dukes County, - - | 132 | 238 | 136 | 234 | 134 | 235 | 136 | 234 | 139 | 231 | 141 | 229 | 136 | 234 | 139 | 224 |
| 14 Counties, - - | 63,222 | 68,150 | 63,382 | 67,006 | 61,699 | 68,382 | 63,805 | 66,828 | 64,015 | 66,432 | 65,111 | 65,512 | 63,246 | 67,011 | 63,412 | 67,109 |

# ERRATA.

Vol. I., page 532, in the Yeas and Nays on the Council, the name of George S. Boutwell should appear among the *Nays*, instead of the Yeas, he having voted *against* the proposition of the member for Manchester.

Vol. I., pages 778–780, the list of Yeas and Nays relating to the Secretary, Treasurer, &c., were inserted before being revised by the official copy, which was corrected after the names were called. The following is correct:—

YEAS.

Adams, Shubael P.
Allen, Charles
Allis, Josiah
Alvord, D. W.
Baker, Hillel
Ballard, Alvah
Bancroft, Alpheus
Barrett, Marcus
Bates, Moses, Jr.
Beach, Erasmus D.
Beal, John
Bennett, Zephaniah
Bird, Francis W.
Bishop, Henry W.
Bliss, Gad O.
Booth, William S.
Boutwell, George S.
Boutwell, Sewell
Bradford, William J. A.
Breed, Hiram N.
Bronson, Asa
Brown, Adolphus F.
Brown, Alpheus R.
Brown, Hiram C.
Brownell, Joseph
Bryant, Patrick
Buck, Asahel
Burlingame, Anson
Carruthers, William
Chapin, Daniel E.
Chapin, Henry
Childs, Josiah
Churchill, J. McKean
Clarke, Stillman
Cleverly, William
Coggin, Jacob
Cole, Lansing J.
Cole, Sumner
Crane, George B.
Cressy, Oliver S.
Crittenden, Simeon
Cross, Joseph W.
Cushman, Thomas
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Dean, Silas
Denton, Augustus
Dunham, Bradish
Durgin, John M.
Easton, James, 2d
Eaton, Calvin D.
Eaton, Lilley
Edwards, Elisha
Fellows, James K.
Fisk, Lyman
Fiske, Emery
Foster, Aaron
Foster, Abram
Fowle, Samuel
Freeman, James M.
French, Charles A.
French, Samuel
Gale, Luther
Gates, Elbridge
Gilbert, Washington
Giles, Charles G.
Gooding, Leonard
Gourgas, F. R.
Green, Jabez
Griswold, Josiah W.
Hadley, Samuel P.
Hall, Charles B.
Hallett, B. F.
Harmon, Phineas
Haskell, George
Hathaway, Elnathan P.
Hawkes, Stephen E.
Hayden, Isaac
Heath, Ezra, 2d
Hewes, James
Hewes, William H.
Hobart, Aaron
Hobart, Henry
Hobbs, Edwin
Holder, Nathaniel
Hood, George
Hooper, Foster
Howard, Martin
Huntington, Charles P.
Huntington, George H.
Hurlbut, Moses C.
Jacobs, John
Johnson, John
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knight, Jefferson
Knowlton, Charles L.
Knowlton, J. S. C.
Knowlton, William H.
Knox, Albert
Kuhn, George H.
Ladd, Gardner P.
Langdon, Wilber C.
Lawton, Job G., Jr.
Leland, Alden
Lincoln, Abishai
Loomis, E. Justin
Marble, William P.
Marvin, Abijah P.
Mason, Charles
Meader, Reuben
Merritt, Simeon
Moore, James M.
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Newman, Charles
Nichols, William
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orne, Benjamin S.
Packer, E. Wing
Parker, Adolphus G.
Parris, Jonathan
Parsons, Samuel C.
Parsons, Thomas A.
Partridge, John
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Penniman, John
Perkins, Daniel A.
Perkins, Jesse
Perkins, Noah C.
Phelps, Charles
Pierce, Henry
Pool, James M.
Rantoul, Robert
Rawson, Silas
Read, James
Richardson, Daniel
Richardson, Samuel H.
Rockwood, Joseph M.
Rogers, John
Ross, David S.
Sanderson, Amasa
Sanderson, Chester
Schouler, William
Sheldon, Luther
Sherril, John
Simonds, John W.
Smith, Matthew
Souther, John
Sprague, Melzar
Spooner, Samuel W.
Stacy, Eben H.
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Stiles, Gideon
Sumner, Charles
Thayer, Joseph
Thayer, Willard, 2d
Thomas, John W.
Tilton, Abraham
Tilton, Horatio W.
Turner, David
Turner, David P.
Tyler, William
Underwood, Orison
Viles, Joel
Wales, Bradford L.
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Weston, Gershom B.
White, Benjamin
White, George
Whitney, Daniel S.
Whitney, James S.
Wilbur, Joseph
Williams, Henry
Wilson, Henry
Wilson, Willard

ERRATA.

Winn, Jonathan B.
Winslow, Levi M.
Wood, Charles C.
Wood, Nathaniel
Wood, Otis
Wright, Ezekiel

NAYS.

Aspinwall, William
Atwood, David C.
Barrows, Joseph
Bell, Luther V.
Bradbury, Ebenezer
Brinley, Francis
Briggs, George N.
Bullock, Rufus
Bumpus, Cephas C.
Cogswell, Nathaniel
Cooledge, Henry F.
Crosby, Leander
Davis, Solomon
Eames, Philip
Eustis, William T.
Fowler, Samuel P.
Gilbert, Wanton C.
Gould, Robert
Goulding, Dalton
Hale, Artemas
Hammond, A. B.
Heard, Charles
Hersey, Henry
Hinsdale, William
Hopkinson, Thomas
Houghton, Samuel
Hunt, William
Jackson, Samuel
Kellogg, Giles C.
Ladd, John S.
Lincoln, Fred. W., Jr.
Livermore, Isaac
Loud, Samuel P.
Lowell, John A.
Miller, Seth, Jr.
Mixter, Samuel
Noyes, Daniel
Orcutt, Nathan
Park, John G.
Parker, Samuel D.
Sargent, John
Stevens, Charles G.
Walcott, Samuel B.
Weeks, Cyrus
Wilkins, John H.
Wilson, Milo
Woods, Josiah B.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Adams, Benjamin P.
Aldrich, P. Emory
Allen, James B.
Allen, Joel C.
Allen, Parsons
Alley, John B.
Andrews, Robert
Appleton, William
Austin, George
Ayres, Samuel
Ball, George S.
Banks, Nathaniel P., Jr.
Bartlett, Russel
Bartlett, Sidney
Bates, Eliakim A.
Beebe, James M.
Bennett, William, Jr.
Bigelow, Edward B.
Bigelow, Jacob
Blagden, George W.
Bliss, William C.
Braman, Milton P.
Brewster, Osmyn
Brown, Artemas
Brown, Hammond
Brownell, Frederick
Bullen, Amos H.
Butler, Benjamin F.
Cady, Henry
Carter, Timothy W.
Case, Isaac
Chandler, Amariah
Chapin, Chester W.
Choate, Rufus
Clark, Henry
Clark, Ransom
Clark, Salah
Clarke, Alpheus B.
Conkey, Ithamar
Cook, Charles E.
Copeland, Benjamin F
Crockett, George W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilbur
Cushman, Henry W.
Dana, Richard H., Jr.
Davis, Charles G.
Davis, John
Hapgood, Seth
Haskins, William
Hayward, George
Henry, Samuel
Heywood, Levi
Hillard, George S.
Howland, Abraham H.
Hoyt, Henry K.
Hubbard, William J.
Hunt, Charles E.
Huntington, Asahel
Hurlburt, Samuel A.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
James, William
Jenkins, John
Jenks, Samuel H.
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Joseph
Lawrence, Luther
Little, Otis
Littlefield, Tristram
Lord, Otis P.
Lothrop, Samuel K.
Marcy, Laban
Marvin, Theophilus R.
Monroe, James L.
Morey, George
Morss, Joseph B.
Morton, William S.
Nash, Hiram
Nayson, Jonathan
Norton, Alfred
Osgood, Charles
Paige, James W.
Paine, Benjamin
Paine, Henry
Davis, Robert T.
Dawes, Henry L.
Day, Gilman
Dehon, William
Deming, Elijah S.
Dennison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Duncan, Samuel
Earle, John M.
Easland, Peter
Edwards, Samuel
Ely, Joseph M.
Ely, Homer
Farwell, A. G.
Fay, Sullivan
Fitch, Ezekiel W.
French, Charles H.
French, Rodney
Frothirgham, R'd, Jr.
Gardner, Henry J.
Gardner, Johnson
Giles, Joel
Gooch, Daniel W.
Goulding, Jason
Graves, John W.
Gray, John C.
Greene, William B.
Greenleaf, Simon
Griswold, Whiting
Hale, Nathan
Hapgood, Lyman W.
Parker, Joel
Payson, Thomas E.
Peabody, George
Perkins, Jonathan C.
Phinney, Sylvanus B.
Plunkett, William C.
Pomroy, Jeremiah
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Reed, Sampson
Rice, David
Richards, Luther
Richardson, Nathan
Ring, Elkanah, Jr.
Rockwell, Julius
Royce, James C.
Sampson, George R.
Sherman, Charles
Sikes, Chester
Simmons, Perez
Sleeper, John S.
Stetson, Caleb
Stevenson, J. Thomas
Storrow, Charles S.
Strong, Alfred L.
Stutson, William
Sumner, Increase
Swain, Alanson
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thompson, Charles
Tileston, Edmund P.
Tower, Ephraim
Train, Charles R.
Tyler, John S.
Upham, Charles W.
Upton, George B.
Vinton, George A.
Wallace, Frederick T.
Wallis, Freeland
Walker, Samuel
Warner, Marshal
Waters, Asa H.
Wetmore, Thomas
Wheeler, William F.
Wilbur, Daniel
Wilder, Joel
Wilkinson, Ezra
Williams, J. B.
Wood, William H.

Absent and not voting, 180.

Vol. III., page 123, 2d column, 4th line, for "moderators" read *monitors*.

Vol. III., page 123, 1st column, 13th line from the bottom, for "Mr. Otis, of Sumner," read *Mr. Sumner, for Otis*.

Vol. III., page 196, 1st column, 6th line from

ERRATA.

the bottom, for "Mr. Morton, of Tisbury," read Mr. Norton, of Tisbury.

Vol. III., page 231, 2d column, last three lines, for "Mr. Huntington, of Northampton, moved to strike out the word 'seven,' in the fifth line, and insert in lieu thereof, the word 'ten,'" read—Mr. Huntington, of Northampton, moved to strike out the word 'seven,' in the fifth line.

Vol. III., page 545, 2d column, 27th line, instead of a division upon the question of reconsidering the vote by which the resolves upon the subject of Elections by Plurality had finally passed, the Yeas and Nays were taken, and resulted—yeas, 137; nays, 48—as follows:—

YEAS.

Adams, Benjamin P.
Adams, Shubael P.
Aldrich, P. Emory
Allen, James B.
Allen, Parsons
Alvord, D. W.
Bancroft, Alpheus
Bates, Moses, Jr.
Beal, John
Bennett, Zephaniah
Bigelow, Jacob
Bird, Francis W.
Boutwell, George S.
Bradbury, Ebenezer
Breed, Hiram N.
Brinley, Francis
Briggs, George N.
Brown, Adolphus F.
Brown, Hammond
Brown, Hiram C.
Brownell, Frederick
Brownell, Joseph
Bryant, Patrick
Bullock, Rufus
Burlingame, Anson
Butler, Benjamin F.
Cady, Henry
Carruthers, William
Case, Isaac
Chapin, Chester W.
Childs, Josiah
Churchill, J. McKean
Clark, Salah
Clarke, Alpheus B.
Cleverly, William
Cole, Lansing J.
Cushman, Thomas
Dana, Richard H., Jr.
Davis, Charles G.
Deming, Elijah S.
Duncan, Samuel
Dunham, Bradish
Eames, Philip
Earle, John M.
Easland, Peter
Easton, James, 2d
Edwards, Elisha
Edwards, Samuel
Ely, Homer
Ely, Joseph M.
Fellows, James K.
Foster, Abram
Freeman, James M.
French, Charles A.
French, Rodney
Frothingham, R., Jr.
Gale, Luther
Gates, Elbridge
Gilbert, Wanton C.
Giles, Joel
Greene, William B.
Griswold, Josiah W.
Griswold, Whiting
Hale, Nathan
Hallett, B. F.
Hapgood, Lyman W.
Hapgood, Seth
Harmon, Phineas
Hawkes, Stephen E.
Heath, Ezra, 2d
Hewes, James
Hillard, George S.
Hobart, Henry
Hood, George
Howland, Abraham H.
Hubbard, William J.
Hunt, William
Kellogg, Giles C.
Kendall, Isaac
Kingman, Joseph
Knight, Hiram
Knight, Joseph
Knowlton, Charles L.
Knowlton, J. S. C.
Langdon, Wilber C.
Little, Otis
Livermore, Isaac
Loomis, Justin E.
Lothrop, Samuel K.
Marvin, Abijah P.
Marvin, Theophilus R.
Mason, Charles
Merritt, Simeon
Morey, George
Morton, Elbridge G.
Morton, Marcus
Morton, Marcus, Jr.
Morton, William S.
Nayson, Jonathan
Nute, Andrew T.
Ober, Joseph E.
Oliver, Henry K.
Orcutt, Nathan
Osgood, Charles
Parker, Adolphus G.
Parker, Samuel D.
Parris, Jonathan
Partridge, John
Phinney, Silvanus B.
Pomroy, Jeremiah
Richards, Luther
Ring, Elkanah, Jr.
Rockwood, Joseph M.
Ross, David S.
Sanderson, Amasa
Schouler, William
Simmons, Perez
Sprague, Melzar
Spooner, Samuel W.
Stevens, Charles G.
Stevenson, J. Thomas
Strong, Alfred L.
Swain, Alanson
Trair, Charles R.
Tyler, William
Underwood, Orison
Upton, George B.
Walker, Amasa
Ward, Andrew H.
Warner, Samuel, Jr.
Waters, Asa H.
Weston, Gershom B.
White, Benjamin
Whitney, James S.
Wilkinson, Ezra
Wilson, Henry
Wood, Charles C.

NAYS.

Allen, Joel C.
Alley, John B.
Allis, Josiah
Baker, Hillel
Bartlett, Russel
Booth, William S.
Boutwell, Sewell
Buck, Asahel
Bumpus, Cephas C.
Clark, Ransom
Crittenden, Simeon
Dean, Silas
Denton, Augustus
Eaton, Calvin D.
Fay, Sullivan
French, Samuel
Gardner, Henry J.
Gilbert, Washington
Giles, Charles G.
Green, Jabez
Hale, Artemas
Haskins, William
Hathaway, Elnathan P.
Hinsdale, William
Hoyt, Henry K.
Jenkins, John
Knowlton, William H.
Knox, Albert
Ladd, Gardner P.
Lawton, Job G., Jr.
Marcy, Laban
Miller, Seth, Jr.
Penniman, John
Perkins, Daniel A.
Pierce, Henry
Rawson, Silas
Rice, David
Royce, James C.
Sherril, John
Simonds, John W.
Stiles, Gideon
Thompson, Charles
Tilton, Horatio W.
Turner, David P.
Wallace, Frederick T.
Wallis, Freeland
Wilder, Joel
Winslow, Levi M.

ABSENT.

Abbott, Alfred A.
Abbott, Josiah G.
Allen, Charles
Andrews, Robert
Appleton, William
Aspinwall, William
Atwood, David C.
Austin, George
Ayres, Samuel
Ballard, Alvah
Ball, George S.
Banks, Nathaniel P., Jr.
Barrows, Joseph
Bartlett, Sidney
Barrett, Marcus
Bates, Eliakim A.
Beach, Erasmus D.
Beebe, James M.
Bell, Luther V.
Bennett, William, Jr.
Bigelow, Edward B.
Bishop, Henry W.
Blagden, George W.
Bliss, Gad O.
Bliss, William C.
Bradford, William J. A.
Braman, Milton P.
Brewster, Osymn
Bronson, Asa
Brown, Alpheus R.

ERRATA.

Brown, Artemas
Bullen, Amos H.
Carter, Timothy W.
Chandler, Amariah
Chapin, Daniel E.
Chapin, Henry
Choate, Rufus
Clark, Henry
Clarke, Stillman
Coggin, Jacob
Cogswell, Nathaniel
Cole, Sumner
Conkey, Ithamar
Cook, Charles E.
Cooledge, Henry F.
Copeland, Benjamin F.
Crane, George B.
Cressy, Oliver S.
Crockett, George W.
Crosby, Leander
Cross, Joseph W.
Crowell, Seth
Crowninshield, F. B.
Cummings, Joseph
Curtis, Wilber
Cushman, Henry W.
Cutler, Simeon N.
Davis, Ebenezer
Davis, Isaac
Davis, John
Davis, Robert T.
Davis, Solomon
Dawes, Henry L.
Day, Gilman
Dehon, William
Denison, Hiram S.
DeWitt, Alexander
Doane, James C.
Dorman, Moses
Durgin, John M.
Eaton, Lilley
Eustis, William T.
Farwell, A. G.
Fisk, Lyman
Fiske, Emery
Fitch, Ezekiel W.
Foster, Aaron
Fowle, Samuel
Fowler, Samuel P.
French, Charles H.
Gardner, Johnson
Gooch, Daniel W.
Gooding, Leonard
Gould, Robert
Goulding, Dalton
Goulding, Jason
Graves, John W.
Gray, John C.
Greenleaf, Simon
Hadley, Samuel P.
Hall, Charles B.
Hammond, A. B.
Haskell, George
Hayden, Isaac
Hayward, George
Hazewell, Charles C.
Heard, Charles
Henry, Samuel
Hersey, Henry
Hewes, William H.
Heywood, Levi
Hobart, Aaron
Hobbs, Edwin
Holder, Nathaniel
Hooper, Foster
Hopkinson, Thomas
Houghton, Samuel
Howard, Martin
Hunt, Charles E.
Huntington, Asahel
Huntington, Charles P.
Huntington, George H.
Hurlburt, Samuel A.
Hurlbut, Moses C.
Hyde, Benjamin D.
Ide, Abijah M., Jr.
Jackson, Samuel
Jacobs, John
James, William
Jenks, Samuel H.
Johnson, John
Kellogg, Martin R.
Keyes, Edward L.
Kimball, Joseph
Kinsman, Henry W.
Knight, Jefferson
Kuhn, George H.
Ladd, John S.
Lawrence, Luther
Leland, Alden
Lincoln, Abishai
Lincoln, Frederic W., Jr.
Littlefield, Tristram
Lord, Otis P.
Loud, Samuel P.
Lowell, John A.
Marble, William P.
Meader, Reuben
Mixter, Samuel
Monroe, James L.
Moore, James M.
Morss, Joseph B.
Nash, Hiram
Newman, Charles
Nichols, William
Norton, Alfred
Noyes, Daniel
Orne, Benjamin S.
Packer, E. Wing
Paige, James W.
Paine, Benjamin
Paine, Henry
Park, John G.
Parker, Joel
Parsons, Samuel C.
Parsons, Thomas A.
Payson, Thomas E.
Peabody, George
Peabody, Nathaniel
Pease, Jeremiah, Jr.
Perkins, Jesse
Perkins, Jonathan C.
Perkins, Noah C.
Phelps, Charles
Plunkett, William C.
Pool, James M.
Powers, Peter
Preston, Jonathan
Prince, F. O.
Putnam, George
Putnam, John A.
Rantoul, Robert
Read, James
Reed, Sampson
Richardson, Daniel
Richardson, Nathan
Richardson, Samuel H.
Rockwell, Julius
Rogers, John
Sampson, George R.
Sanderson, Chester
Sargent, John
Sheldon, Luther
Sherman, Charles
Sikes, Chester
Sleeper, John S.
Smith, Matthew
Souther, John
Stacy, Eben H.
Stetson, Caleb
Stevens, Granville
Stevens, Joseph L., Jr.
Stevens, William
Storrow, Charles S.
Stutson, William
Sumner, Charles
Sumner, Increase
Taber, Isaac C.
Taft, Arnold
Talbot, Thomas
Taylor, Ralph
Thayer, Joseph
Thayer, Willard, 2d,
Thomas, John W.
Tileston, Edmund P.
Tilton, Abraham
Tower, Ephraim
Turner, David
Tyler, John S.
Upham, Charles W.
Viles, Joel
Vinton, George A.
Walcott, Samuel B.
Wales, Bradford L.
Walker, Samuel
Warner, Marshal
Weeks, Cyrus
Wetmore, Thomas
Wheeler, William F.
White, George
Whitney, Daniel S.
Wilbur, Daniel
Wilbur, Joseph
Wilkins, John H.
Williams, Henry
Williams, J. B.
Wilson, Milo
Wilson, Willard
Winn, Jonathan B.
Wood, Nathaniel
Wood, Otis
Wood, William H.
Woods, Josiah B.
Wright, Ezekiel

Absent and not voting, 234.

In the speech of Mr. Parker, of Cambridge, in the first volume :—

Page 145, 1st column, 7th line from the bottom,
For—" whatever other law might have been,"
Read—*and whatever other law may have been.*

Page 148, 2d column, 17th and 18th lines from the bottom,
For—" that he regarded this Act of 1852, as a charter, that it was a contract,"
Read—*that regarding this Act of* 1852 *as a charter, it was a contract.*

Same page and column, 13th, 14th and 15th lines from the bottom,
For—" he regarded this Act of 1852, as the Constitution of this body, and that the legislature therefore had no power,"
Read—*regarding this Act of* 1852 *as the Constitution of this body, the legislature had no power.*

Same page and column, 2d, 3d and 4th lines from the bottom,
For—" I understood them to be maintained by him as suggestions which had been made, and not as propositions of his own,"
Read—*I understood them to be maintained by him upon suggestions which had been made, and not founded upon propositions of his own.*

Page 149, 1st column, 15th and 16th lines,
For—"Then regarding it in that light, the conclusion was drawn,"
Read—*Then regarding it in the light of a charter the conclusion was drawn.*

Same page and column, 30th and 31st lines,

## Errata.

For—"But while arguing that it is a charter the gentleman forgets,"
Read—*But while arguing upon it as a charter the gentleman forgot.*

Same page and column, 44th line,
For—"without an incorporation,"
Read—*the act of incorporation.*

Same page and column, 47th and 48th lines,
For—"And now in relation to our Constitution; gentlemen say that the Act,"
Read—*And now in relation to it as a Constitution; the gentleman says that if the Act.*

In the next line strike out "and".

Page 151, 1st column, 7th line,
For—"I relate this anecdote to show the feeling which existed,"
Read—*This anecdote was related to show the feeling of importance which existed.*

And in the 10th line, read—*But the reply.*

Page 158, 1st column, 7th and 8th lines from the bottom,
For—"The response of the people has given a character to the law. It has affixed to it something beyond the law,"
Read—*Has the response of the people given a character to the law? Has it affixed to it something different from a law?*

Page 159, 1st column, 17th line,
For—"But let us admit that they have the power,"
Read—*But the people have the power.*

The reader will observe several other verbal errors in that speech more or less apparent, there having been no revision of it by the author.

In speeches of Mr. Hallett, for Wilbraham, in the first volume:—

Page 168, 2d column, 4th line from the bottom,
Read—"The people have a right to make their [*fundamental*] laws."

Page 332, 1st column, 20th line,
Strike out "Lord" before "Bacon."

Page 367, 1st column, 15th line,
For—"United States Constitution,"
Read—*State Constitution.*

Page 437, 1st column, 8th line from the bottom,
For—"Rhode Island had a council,"
Read—*Maryland.*

Page 439, 2d column, 18th line,
For—"The two boards separately,"
Read—*Separated.*

Page 497, 2d column, second line,
For—"line a leaf,"
Read—*live a leaf in history, &c.*

Page 506, 2d column, 24th line,
For—"Shone on, and shine on,"
Read—*Shone on and shone on.*

Page 567, 1st column, 28th line,
For—"the importation of these foreigners who come here to become citizens in a single year, adds," &c.
Read—*the immigration of those foreigners who come here to become citizens:—in a single year adds more solid capital, &c.*

Page 910, 1st column, 21st line,
For—"doubt,"
Read—*doubts.*

Same page, 2d column, 3d line,
Put a comma after "eighteen assistants."

Page 911, 2d column, 14th line,
After "we hold." put a comma instead of a period.

Page 914, 1st column, 28th line,
For—"every,"
Read—*very.*

Page 921, 1st column, 23d line, add *no* before "danger."

In the speech of Mr. Hathaway, of Freetown, in the first volume:—

Page 81, 2d column, 11th line,
For—"nothing," &c.
Read—*but little, if anything to do, &c.*

Same page and column, 28th line from the bottom,
For—"I suppose that under this clause," &c.
Read—*I do not suppose, &c.*, and at the end of the sentence, after the word "vacancy," add, *but would have the right to impose a fine.*

Same page and column, 18th line from the bottom,
After the word "represented" add, *before issuing a precept to such town to fill the vacancy.*

Same page and column, 15th line from the bottom,
After the word "resigned," add—*by the acceptance of an office incompatible with the office of a representative.*

Same page and column, 2d line from the bottom,
Between the words "office which," insert the words, *the holding of.*

Page 82, 1st column, 6th and 7th lines,
For—"we have no power to do so, because,"
Read—*it does not follow that we have power to do it, as.*

Same page and column, 29th line,
At the end of Mr. Hathaway's remarks, after the word "represented,"
Add—*in the formation of an organic law for the government of the people of which such town is a part.*

Mr. Hathaway's remarks are, in this matter, very imperfectly reported, probably from the cause of the difficulty of hearing in the Music Hall, where these remarks were made.

In the speech of Mr. Wilson, of Natick, in the third volume:—

Page 247, 2d column, 8th line from the bottom,
For—"Governor Leonard,"
Read—*Governor Seward.*

# INDEX

TO

# VOLUMES I., II. AND III.

MEMBERS AND SUBJECTS.

MEMBERS AND SUBJECTS.